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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X
:
UNITED STATES OF AMERICA CR-13-607

-against- : United States Courthouse
PHILLIP A. KENNER and Central Islip, New York
TOMMY C. CONSTANTINE,

Defendants. : June 10, 2015
- - - - - X 9:30 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE, and a jury

APPEARANCES:

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For Mr. Kenner

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For the Defendants:

LARUSSO & CONWAY
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BY: ROBERT LARUSSO, ESQ.
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Proceedings recorded by mechanical stenography.
Transcript produced by computer.

Mary Ann Steiger, CSR
Official Court Reporter

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1 THE CLERK: All rise.

2 THE COURT: Please be seated.

3 (Case called, appearances noted.)

4 THE COURT: The jurors are all here and we are
5 ready to go?

6 MR. MISKIEWICZ: Yes.

7 MR. LARUSSO: Yes, your Honor.

8 THE COURT: Let's bring in Mr. Rozenboom and the
9 jury.

10 (The witness resumes the stand.)

11 THE COURT: Good morning, sir, if you could come
12 up here and wait for the jury to come in.

13 THE CLERK: All rise.

14 (The jury is present.)

15 THE COURT: Please be seated.

16 Good morning, members of the jury.

17 ALL JURORS: Good morning.

18 THE COURT: It's good to see everyone again this
19 morning.

20 As you know, when we ended yesterday,
21 Mr. Rozenboom was on cross-examination by Mr. LaRusso, so
22 we will continue from that point.

23 Mr. Rozenboom, I remind you that you're still
24 under oath; do you understand?

25 THE WITNESS: Yes, I do.

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1 RICHARD ROZENBOOM,

2 called as a witness, having been previously
3 duly sworn, was examined and testified further
4 as follows:

5

6 THE COURT: If you could pull the mike a little
7 closer to you, and is the green light on?

8 THE WITNESS: Yes, it is.

9

10 CROSS-EXAMINATION

11 BY MR. LARUSSO:

12 Q. Good morning, Mr. Rozenboom.

13 How are you?

14 A. I'm fine.

15 Q. Yesterday during your examination you mentioned at
16 one point that Mr. Constantine wanted to buy the Falcon, I
17 think you testified, pretty bad at some point; is that
18 correct, the Falcon 10?

19 A. Yes.

20 Q. Do you recall, at any point in your discussions with
21 Mr. Constantine, where he indicated that he represented a
22 larger group in regards not only to the Falcon 10, but
23 also to Diamante Air?

24 A. I'm not sure I recall anything like that.

25 Q. Do you recall, at any point in time, either in

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1 speaking with Mr. Constantine or in any e-mail
2 communications with him, where he told you that he was
3 representing or was part of a group that was seeking a
4 global settlement in regards to matters of a man by the
5 name of Ken Jowdy?

6 A. There were a couple of conversations where he alluded
7 that there was some effort to pursue Mr. Jowdy for some
8 dispute that was going on.

9 Q. 198 was received in evidence, and I'm going to turn
10 to the e-mail that was received as C 198 yesterday. It
11 was a string of e-mails between you and Mr. Constantine.

12 I don't know if you recall the last few
13 questions where we talked about it, but I will display
14 portions of it for you.

15 I'm looking at page 3 of 4 and it is a portion
16 of the e-mail. I'm going to direct your attention to
17 those two highlighted portions, particularly the second
18 one.

19 And while you're looking at it, I will read it
20 into the record.

21 FYI, I have hired an attorney, Ron Richards, who
22 represents our entire group as part of the global
23 settlement, and in brackets, all matters between our side
24 and Jowdy, et al, and will have him assist me, Gonchar and
25 Kenner to review and execute whatever settlement docs

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1 you/your attorney provides to us.

2 Does that refresh your recollection that

3 Mr. Constantine was talking to you not just in reference
4 to the Falcon 10, but also talking to you about the entire
5 package in regards to this Global Settlement Fund?

6 A. That's what it appears in this document.

7 My focus at the time when we were discussing was
8 my line of business in the two aircraft and getting that
9 resolved.

10 Anything else really wasn't my center of
11 influence or focus, but that is what that document alludes
12 to, something to that effect, but the details, specific
13 details, I don't know anything beyond that.

14 Q. But you have some recollection Mr. Constantine was
15 representing another group of people, the particulars of
16 which you don't recall at this point?

17 A. That is correct.

18 Q. Okay.

19 MR. LARUSSO: I apologize to the Court. The
20 original for the some reason we haven't located and the
21 copies, so I'm using mine and I crossed out some
22 handwritten information that's not relevant, okay?

23 THE COURT: Okay.

24 BY MR. LARUSSO:

25 Q. Mr. Rozenboom, I'm just going to read this.

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1 This is page 2 of 4 in the string e-mail.

2 Just to be clear, the parties participating in
3 the global settlement have already deposited the necessary
4 funds in Ron Richards' trust account for you and I to
5 settle the Falcon and Metro loans as you and I have
6 discussed.

7 The only issue pending is the new 425k
8 loan/guarantee.

9 Does that provide you with any further details
10 especially in regards to where the money was coming from
11 to payoff both the loans?

12 A. As I read the e-mail, the correspondence here, where
13 the money was coming from I had no idea.

14 And as it references the parties, I didn't know
15 if that was specifically monies of Kenner and other
16 parties, that being Gonchar.

17 As a matter of fact, in one point in time I
18 thought that Tommy, although I may not have an e-mail to
19 that effect, but in a conversation I thought that Sergei
20 was putting some money into the transaction to come up
21 with the differential between the value of the airplane,
22 the Falcon being purchased, and that \$363,000 that needed
23 to cover the deficiency.

24 But as to -- other than the guarantors, no other
25 parties names were shared with me.

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1 I have no idea who those other parties were, if
2 there were any, other than what this corresponds alludes
3 to. I didn't have no idea who they were.

4 Q. Okay. Let me just ask a few questions.

5 The information in the e-mail, you don't know
6 who the parties are, you never talked to them?

7 A. No.

8 Q. You had no specific information regarding it, but my
9 question to you is that is an e-mail between you and
10 Mr. Constantine exchanging information relative to the two
11 loans on the aircraft?

12 A. That is correct.

13 Q. Would it be fair to say then that during your
14 discussions with Mr. Constantine, you weren't just dealing
15 with the Falcon 10, you were dealing with the entire
16 package; is that correct?

17 A. Well, I refer to it as the two aircraft on the
18 Diamante loans.

19 Q. That's fair.

20 By the way, have you, in your line of business,
21 repossessed many airplanes?

22 A. Yes.

23 Q. You're in the business obviously in large part
24 lending money for the purchase of aircraft; is that
25 correct?

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1 A. My responsibility is on the other end as opposed to
2 the lending, which is to satisfy a loan and sometimes it
3 requires the collateral to be if you will captured,
4 recovered and sold.

5 Q. When you resell the airplanes, I believe as you were
6 contemplating doing with the Falcon 10 with
7 Mr. Constantine, would it be customary or do you impose
8 upon the buyer that he or she take all responsibility for
9 the entire loan if it included additional airplanes?

10 Do you understand the question?

11 A. I'm not sure I can answer that. If you can ask the
12 question again.

13 Q. In this particular case there were two airplanes?

14 A. Yes.

15 Q. And you were -- I think you testified that it was
16 your intent or interest to try and package the deal and
17 not parcel it out. That is, to sell one plane off and the
18 other plane off; is that correct?

19 A. That is correct.

20 Q. Isn't it also true that in many other instances where
21 somebody comes to you to buy one of the repossessed
22 planes, you don't impose upon them the responsibility of
23 taking on the entire series of loans that maybe related to
24 that loan?

25 A. Every situation is different, and those deals are

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1 facts intensive, the collateral, who the guarantors are.

2 There are a whole number of different factors,
3 but it can be. I try to resolve the entire relationship.

4 There are times when there's the one where there
5 might be an anxious buyer laying out there, if you will,
6 and wants to acquire that asset and if it can be something
7 that can be done relatively conveniently with the
8 cooperation of the debtor, that is an option that would be
9 considered and may happen.

10 Q. In this case, you decided not to exercise that
11 option, you wanted to do a global disposition of the loan
12 with Diamante Air?

13 A. That is correct.

14 Q. You testified that the forbearance and partial
15 settlement agreement was executed June 3rd of 2009; is
16 that correct?

17 Let me just show this to you. This is the
18 forbearance and partial settlement agreement you testified
19 to?

20 A. Yeah.

21 I know it was in June of 2009. The specific
22 date I'm not that certain of.

23 Q. This is exhibit 4212, and I'll just turn to the last
24 page.

25 A. That helps me. June 3rd, yes.

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1 Q. Turning to paragraph G 3 which I believe was part of
2 your testimony.

3 Without reading the whole thing, can you explain
4 to us, particularly paragraph 3, what the intent of those
5 particular paragraphs is regarding and it's called
6 disposition of the Fairchild.

7 (Pause in proceedings.)

8 Do you recall testifying to that on direct
9 examination, this portion that I believe you were directed
10 to, G 3?

11 I'm asking you to take a look at all of it and
12 explain what these provisions are.

13 A. As I recall the conversation today or the question
14 centered around G 1, but I do remember this aspect of the
15 contract or the agreement in reading through that.

16 And it was basically that we could jointly move
17 to try to sell the Fairchild Metro and that there was a
18 threshold of dollars that was hopefully going to be the
19 expectation that we could receive from that aircraft, but
20 if we didn't, there was a reserve set up in escrow for
21 potential deficiency of \$50,000. That's basically what
22 that was.

23 Q. You testified to that yesterday.

24 What about paragraph 3 in particular?

25 A. Paragraph what?

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1 Q. Paragraph 3 of subdivision G.

2 A. Paragraph 3 is what I just referred to, unless
3 there's something else you want to ask me a question. I'm
4 not sure what you're trying to get at.

5 Q. In effect, this agreement calls for both parties to
6 make efforts to try and sell the Fairchild to receive as
7 much money as possible to satisfy the debt; is that
8 correct?

9 A. It does, yes.

10 Q. How long do you recall it taking to finally sell the
11 Metro 3?

12 A. A little over a year.

13 Q. Before that sale -- let me ask you, if the plane was
14 not sold, what would have been the consequences from your
15 point of view only?

16 A. Well, it would be -- maybe that's not -- it wouldn't
17 be sold. The bank -- at \$510,000 and the fact it didn't
18 sell at that number and what happened is we had an offer
19 for 370 is what I recall and I consulted, because I had to
20 get Tommy Constantine's permission, if you will consent to
21 sell the aircraft for a price lower than 510, which I did
22 obtain, and it sold. Had it not sold, I would probably
23 pursue the debtor and guarantors for payment on that
24 aircraft.

25 Q. Who would be the debtors?

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1 A. The debtor would be Diamante Air, and the guarantors
2 were Gonchar and Kenner.

3 Q. In regards to Diamante Air, who would be the
4 individuals that would be subject to that kind of action?

5 A. Well, there is no individuals in that situation.

6 It's a limited liability corporation, if you will, so I
7 would be going after the assets of that limited liability
8 corporation.

9 Q. Do you know what the term limited liability in good
10 standing means?

11 A. Yes.

12 Q. Can you just explain what that means?

13 A. Each state has -- technically each state has a place
14 where corporations are incorporated, and annually they
15 have to submit financial reports to those states. If they
16 fail to do that and pay a fee, they fall out of good
17 standing.

18 Q. How would that affect the liability of the individual
19 members of an LLC, if this particular company was not in
20 good standing?

21 A. It limits its ability to borrow money, I can tell you
22 that, but other than that I'm not sure I can answer that
23 aspect.

24 Q. Do you know if Diamante Air was in good standing at
25 the time that you were negotiating the resolution of these

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1 Loans?

2 A. I don't know that.

3 Q. If the LLC was not in good standing, would it give
4 you the opportunity to go after members because of that
5 lack of standing?

6 A. That would be -- I don't know the answer to that. I
7 would have to pursue that. That's not a path that I have
8 pursued in my career. I would have to consult with my
9 legal advisor to support that avenue.

10 Q. You knew at the time that Diamante Air had a number
11 of members. We went through that yesterday; is that
12 correct?

13 A. That is correct.

14 Q. In addition to Mr. Kenner and Mr. Gonchar and
15 Mr. Jowdy, correct?

16 A. That is correct.

17 Q. Just for the record, you didn't know who those other
18 individuals were, did you?

19 A. Not until you pointed it out. But I still, if you
20 asked me what their names were now, I couldn't tell you.
21 But there were other people, yes.

22 The thing -- and I want to try and answer your
23 question -- is that there is a corporation, Diamante Air.
24 Going after the corporation is who I could go after for
25 collection of that debt; and the guarantors, which were

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1 Kenner and Gonchar, and that was -- unless my attorney who
2 would assist me in going down the path, we never named in
3 our complaint, when we sued Diamante Air and the
4 guarantors, any other individual. We were going after
5 Diamante Air and the guarantors and that's all that we
6 were going after in our lawsuit.

7 Q. But it would be fair to say that -- withdraw that.

8 In regards to this particular aircraft, you said
9 it took approximately a year to sell?

10 A. It did.

11 Q. There were difficulties in selling that aircraft?

12 A. Well, yes, there were a number of difficulties. Not
13 only the aircraft, but just the general state of the
14 economy.

15 After 2008, most of the people here can probably
16 think and you can think in the back of your head,
17 2008-2009, that was a very hard economic times for a lot
18 of people, and the people that were buying airplanes were
19 a very thin herd of folks to buy this type of airplane, so
20 the buyers kind of had dried up.

21 Q. I'm going to try and see if I can ask you a number of
22 questions and move onto another topic.

23 But during the period of time between the
24 forbearance agreement, which is June 3rd of 2009, and a
25 year later when the aircraft was sold, you said

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1 Mr. Constantine had placed ads for the sale of the
2 airplane; is that correct?

3 A. That is correct. I saw those ads.

4 Q. So, according to you, you recall that he was making
5 efforts, as were you, to try and locate a buyer for the
6 Metro 3; is that right?

7 A. That is correct.

8 Q. Do you remember him corresponding with you that he
9 had a number of -- I'll call it sales leads, to possibly
10 sell the Metro 3 during that period of time?

11 A. I do.

12 Q. And he communicated with you the interest of some of
13 the buyers and where the airplane was and what
14 specifications, and you exchanged information like that
15 during that period; is that fair?

16 A. Yes.

17 Q. That saves me showing you three e-mails.

18 Thank you.

19 Showing you 211, if you could take a look at
20 this, please.

21 Do you recall, this an e-mail between you and
22 Mr. Constantine, June 18, 2010, in regards to your
23 discussions in reference to the sale of the Metro 3?

24 A. I do.

25 MR. LARUSSO: Your Honor, may I ask this be

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1 received at this time?

2 MS. KOMATIREDDY: No objection, your Honor, with
3 respect to all of the e-mails, just with the same limiting
4 instruction.

5 MR. HALEY: No objection, Judge.

6 THE COURT: It's received. 211 is admitted with
7 the same instructions that I gave you yesterday, that it's
8 not being admitted for the truth of Mr. Constantine's
9 statement, but it's for his state of mind.

10 (Defense Exhibit 211 in evidence.)

11 BY MR. LARUSSO:

12 Q. Mr. Rozenboom, this is a June 18 e-mail from you to
13 Tommy and a man by the name of Peter Murphy.

14 This is your e-mail; is that correct?

15 A. Yes, it is.

16 Q. Could you tell us, rather than me read all this,
17 would you explain to the jury what you were communicating
18 to Mr. Constantine and why?

19 A. The salient point is the highlighted aspect.

20 We attempted to try to sell the aircraft for a
21 year, and the best price that we, at that time, I thought
22 I could get out of this airplane, was this offer that had
23 been received for \$380,000, so that's what this is about.

24 Q. Just prior to that, it says it's the best offer you
25 had received at this point in time and you wanted to take

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1 it; is that correct?

2 A. I did.

3 Q. You made it pretty clear to Mr. Constantine that if
4 he didn't take it, you may end up pursuing litigation in
5 regards to it?

6 A. I may have said something along that line, yes.

7 Q. Now, this refers to an offer by a Mr. Diffley?

8 A. Yes.

9 Q. I believe you testified that -- withdraw that.

10 Do you know who first made contact with
11 Mr. Diffley and who negotiated with Mr. Diffley in regards
12 to the price on the Metro 3?

13 A. Well, I spoke with him, but I believe that there was
14 somebody else at the bank but right now, today, I couldn't
15 tell you who that was.

16 Q. Well, do you have any recollection that it was
17 Mr. Constantine who first made contact with Mr. Diffley
18 and discussed with him the possible terms of purchasing
19 the Metro 3?

20 A. No, I don't recall that.

21 Q. Let me just show you two e-mails marked C 209 and 207
22 for identification, and ask you, do you recognize these as
23 additional e-mail communications between you and
24 Mr. Constantine prior to the disposition of sale of the
25 Metro 3?

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1 They're relatively short and please read all of
2 it.

3 (Pause in proceedings.)

4 You could read the whole thing. I will direct
5 your attention to a portion just below the middle of C
6 209.

7 (Pause in proceedings.)

8 A. I do recall those.

9 Q. You recall these e-mails?

10 A. I do.

11 Q. Do these e-mails indicate that Mr. Constantine made
12 contact with Mr. Diffley and was actually doing some
13 negotiations with regards to the purchase price?

14 A. It does indicate that, yes.

15 Q. So you would agree with me that this may have been
16 his client in terms of trying to secure and purchase the
17 Metro 3?

18 A. It does indicate that, yes.

19 MR. LARUSSO: Your Honor, may I ask that 207 and
20 209 be received.

21 MS. KOMATIREDDY: Same position. No objection.

22 MR. HALEY: No objection.

23 THE COURT: 209 and 207 are admitted.

24 (Defense Exhibits 207 and 209 in evidence.)

25

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1 BY MR. LARUSSO:

2 Q. Now, you talked about coming to a resolution of the
3 sale of the Metro 3.

4 I believe you said that -- well, let me just
5 show you what's been marked 212 and ask you if this e-mail
6 outlines, between you and Mr. Constantine, outlines
7 essentially the terms of the deal that you were
8 negotiating for the sale of the Metro 3.

9 (Pause in proceedings.)

10 I can assume, Mr. Rozenboom, you hadn't seen
11 this prior to your testifying or during your preparation
12 period; is that correct?

13 A. I have not.

14 Q. Do you recognize it as an e-mail communication
15 between you and Mr. Constantine?

16 A. I do.

17 (Pause in proceedings.)

18 Q. The question was, does this appear to outline the
19 terms of the agreement between you and Mr. Constantine?

20 A. It was an agreement or open dialogue, e-mail
21 dialogue, on what it would take to resolve.

22 I don't think all those terms were agreed to in
23 any type of form, but it was a foundation for structuring
24 an arrangement.

25 MR. LARUSSO: May I introduce C 212 at this

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1 time?

2 MS. KOMATIREDDY: No objection.

3 MR. HALEY: No objection.

4 THE COURT: C 212 is admitted.

5 (Defense Exhibit C 212 in evidence.)

6 BY MR. LARUSSO:

7 Q. I'm just pointing to the highlighted sections where
8 it talks about there's an agreement with regards to the
9 sale to Mr. Larry Diffley and that's the 380,000 we have
10 been talking about; is that correct?

11 A. Yes.

12 Q. The second one is the escrow monies that you
13 testified to that were provided at the time in the
14 original forbearance agreement that we talked about
15 earlier dated June 3rd, 2009?

16 A. Yes.

17 Q. The last paragraph says:

18 1st Source Bank receives 55,000 from Sergei
19 Gonchar in good faith.

20 That was the difference between the sell price
21 and what the bank wanted for the sale of the plane to
22 satisfy the deficiency; is that correct?

23 A. Yes.

24 THE COURT: It says good fund.

25 A. In good funds, not good faith.

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1 Q. In good fund?

2 A. Yes.

3 Q. Do you know if that money was paid by Mr. Gonchar?

4 A. I don't recall.

5 Q. It was paid though, was it not?

6 A. I would have to check the bank's records on that. I
7 don't recall right now.

8 Q. So the best recollection, whatever the deficiency was
9 between 380,000 that the bank wanted, it was paid?

10 MS. KOMATIREDDY: Objection, asked and answered.

11 THE COURT: You can answer that.

12 A. I don't recall. I would have to take a look at the
13 loan history to be able to answer that with any certainty.

14 Q. Do you know what the term fractional ownership means,
15 fractional ownership program?

16 A. I have a vague understanding of it.

17 Q. In your line of business have you ever come to use or
18 hear about that term?

19 A. I have.

20 Q. What was your understanding of the term?

21 A. Well, there are people that sell a portion of an
22 aircraft to parties, other parties.

23 Q. Do you recall that sometime after the closing that
24 you've been testifying to of the Falcon 10, the
25 transaction with AZ Falcon Partners was put together by

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1 Mr. Constantine as a fractional ownership program with the
2 Falcon 10 and the AZ Falcon Partners; do you recall that?

3 A. I don't recall it that way, no.

4 Q. Do you have any recollection that the transaction
5 involved multiple owners of that one airplane, the Falcon
6 10?

7 A. AZ, if we're talking about AZ Falcon Partners, my
8 understanding of that was that that company was going to
9 be owned by a lady by the name of Fergusson and Tommy was
10 going to run that and/or manage that aircraft.

11 I don't recall today any aspect of it being a
12 fractional, no.

13 Q. Do you know in regards -- you mentioned I believe
14 amended and operating agreement, do you recall that?

15 My notes might be off on that. Excuse me. Do
16 you remember testifying about an amended operating
17 agreement?

18 A. There was a document that was submitted yesterday I
19 believe on that line.

20 I don't remember the document number.

21 Q. Nor do I.

22 But do you remember after the loan had been
23 extended to I believe it was AZ Partners by your company?
24 You testified to that the other day.

25 A. Yes.

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1 Q. And there came a time when there were payments not
2 being made.

3 Do you remember talking to Mr. Constantine at
4 all about that?

5 A. Yes.

6 Q. And do you recall him telling you that there was a
7 falling out with some of his partners which was causing
8 him some financial hardship in meeting those payments?

9 A. Yes.

10 Q. Did he ever tell you who those other partners were?
11 Do you remember who they were?

12 A. He may have said their names, but that was -- I was
13 trying to get money. I wasn't focusing in on who he was
14 getting the money from. I just wanted to get paid.

15 Q. Do you remember him ever saying that the other
16 participants were hockey players, NHL hockey players?

17 A. He did make some overtures that they were -- I think
18 he told me that some of them are or one of them were
19 hockey players. I know that was something that he said.

20 Q. It's something that you would remember, and you do
21 remember it?

22 A. I remember. As far as the individual names, no.

23 Q. To the extent that Mr. Constantine was having
24 difficulties and struggling with making payments at times,
25 after all is said and done, did Mr. Constantine hold up,

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1 from your point of view, his obligations to you, the bank,
2 financially and otherwise?

3 A. I think to answer that question he was cooperative in
4 assisting in getting the loan paid bank and the bank
5 getting satisfied.

6 Did we get paid back in full? No. We took a
7 little bit of a shortfall. But that was all negotiated
8 and agreed to. The bank was willing to do it. We wanted
9 to collect a bigger part of the monies and move on.

10 Q. So your testimony then is that in those efforts he
11 was cooperative and you --

12 A. I did say that, yes, he was cooperative.

13 Q. You also testified about the log books.

14 Do you know who was responsible for holding and
15 maintaining the log books?

16 A. Usually that is the party who is operating the
17 aircraft.

18 Q. At the time that you became involved in collecting
19 the loans, that would have been Mr. Ken Jowdy; is that
20 correct?

21 A. It was my understanding in conversations with Tommy
22 and/or Ken. I'm not sure which one shared. I know for
23 sure Tommy told me that.

24 THE COURT: You said Ken. You're talking
25 about --

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1 THE WITNESS: Mr. Kenner. Thank you.

2 A. That Mr. Jowdy had -- they believed that he had
3 access and/or control of the log books.

4 I recall in an e-mail I read recently that Phil
5 Kenner was trying to check his records, thought he knew
6 where they were.

7 This is about the time we were trying to get the
8 June agreement put together and there was some problems
9 locating the log books for the Falcon 10.

10 Subsequently, I was told by Tommy that he never
11 was able to recover those log books for the Falcon 10. I
12 was able -- he had in his possession the one for the
13 Metro. Those were turned over to the bank and turned over
14 to the people that were operating that aircraft for us and
15 ultimately the buyer.

16 Q. Whose obligation is it to maintain the log book, to
17 have custody of them?

18 A. Typically the operator.

19 Q. When you say the operator, the operator/owners?

20 A. In every situation it's different, but whoever is
21 operating the aircraft, that could be an owner, that could
22 be a party who is contacted to perform routine maintenance
23 on the aircraft. They would need the log book to make
24 those entries. Whoever is operating the aircraft is the
25 party that usually controls those log books.

Rozenboom - Cross/LaRusso

3371

1 Q. Is it customary for the potential buyers to take
2 possession of an aircraft log book before they actually
3 purchase the aircraft itself?

4 A. Not usually take possession is not how I would
5 characterize it.

6 They certainly have possession of them to be
7 able to do their due diligence and review those log books.

8 Q. Now, you testified that Mr. Constantine was
9 cooperative in trying to resolve the two loan
10 deficiencies.

11 Did you make any efforts to contact Mr. Jowdy
12 and solicit his cooperation?

13 A. Early on I did.

14 Q. Tell us the results of those efforts?

15 A. I may have received one phone call from him and he
16 shared with me that he did not have the log books.

17 Q. Did you make any other efforts with Mr. Jowdy to try
18 and get information to resolve these two loans?

19 A. Not that I recall.

20 Q. He was the managing member; is that correct, of
21 Diamante Air?

22 A. Mr. -- I did in the very beginning.

23 Mr. Jowdy told me that I needed to talk with
24 Ken -- excuse me -- Mr. Kenner to get the loan -- to get
25 the money from him.

Rozenboom - Cross/LaRusso

3372

1 Q. Do you remember any discussions with Mr. Jowdy and/or
2 an attorney representing him regarding their participation
3 in the sale of the two aircraft?

4 MS. KOMATIREDDY: Objection, hearsay.

5 THE COURT: Sustained.

6 BY MR. LARUSSO:

7 Q. Do you know a man by the name of Mr. Harvey, Thomas
8 Harvey?

9 A. That doesn't mean anything to me.

10 Q. Did you communicate in any way, just yes or no, with
11 Mr. Jowdy during your efforts to try and sell the two
12 airplanes, other than what you testified to?

13 A. I may have got a phone call from Mr. Jowdy. I do
14 remember getting a phone call from him. But it was more
15 from the standpoint that he was trying to dig for
16 information is what I recall.

17 And given that my efforts were moving forward
18 with maybe a global settlement, that was my focus with
19 Mr. Constantine and Gonchar and Kenner, so that was my
20 focus.

21 Q. Do you have any recollection, during the efforts to
22 sell the airplanes and during the period of the efforts to
23 sell the Metro 3, anyone trying to interfere or prevent
24 the agreement you reach with Mr. Constantine from not
25 going forward?

Rozenboom - Cross/LaRusso

3373

1 Do you remember anybody trying to interfere with
2 that?

3 A. Yeah, I vaguely remember something along that line.

4 Q. Do you remember who they were?

5 A. No.

6 Q. Just one more exhibit if I could.

7 Mr. Rozenboom, would you take a look at what's
8 marked C 213.

9 Do you recognize that as an e-mail between you
10 and Mr. Constantine around June 2009?

11 (Pause in proceedings.)

12 A. I do remember that e-mail.

13 And I think this was actually followed up with a
14 conversation, a phone call with Tommy.

15 MR. LARUSSO: May I ask that C 213 be received.

16 MS. KOMATIREDDY: No objection, with the same
17 limiting instruction.

18 MR. HALEY: No objection.

19 THE COURT: It's admitted with the same
20 instruction as before.

21 (Defense Exhibit C 213 in evidence.)

22 BY MR. LARUSSO:

23 Q. I'm going to publish this to the jury if I could and
24 I'll give you a chance to explain the follow-up
25 conversation that you had.

Rozenboom - Cross/LaRusso

3374

1 This is June 18, 2009, from Mr. Constantine to
2 you, and it's:

3 Rick, can you please advise Shane Harris at
4 Atlantic that I am now authorized to make decisions with
5 respect to the airplane.

6 Also, I would advise him that Mr. Jowdy and
7 Mr. Harvey may be inquiring and/or sending someone over to
8 try and gain access to the airplane.

9 Please advise him as to their attempts to
10 negatively impact the dealings between us thus far, and
11 that Atlantic's personnel should be on high alert in this
12 regard.

13 My concern is that Jowdy and Harvey are in close
14 proximity to where the aircraft is located, and I would
15 not put it past them to try to do something to the
16 airplane.

17 In other words, if it's not me or someone from
18 Cabin Crafters, they should not be allowed within 100 feet
19 of the airplane.

20 Can you explain who Shane Harris of Atlantic is?

21 A. Shane Harris was the party there that had custody of
22 the aircraft. It was in his control to release it or
23 grant access to it.

24 Q. Do you know which aircraft they're talking about?

25 A. The Falcon 10.

Rozenboom - Redirect/Komatireddy

3375

1 Q. Down at the bottom is the word Cabin Crafters; what
2 is that?

3 A. I believe that was the party that had done or was
4 doing some work on the interior of the Falcon 10.

5 Q. And Mr. Harvey, you never met or spoke to Mr. Harvey;
6 is that correct?

7 A. Not that I recall.

8 Q. Do you know what, if any, relationship he had to
9 Mr. Jowdy?

10 A. No.

11 Q. Did either Mr. Jowdy or a man by the name of
12 Mr. Harvey try to contact you as you recall?

13 A. Mr. Harvey, no.

14 I had already testified that Jowdy did call
15 fishing for what was going on with the aircraft.

16 MR. LARUSSO: Your Honor, just one moment.

17 (Pause in proceedings.)

18 MR. LARUSSO: Your Honor, no further questions.

19 THE COURT: Any redirect?

20

21 REDIRECT EXAMINATION

22 BY MS. KOMATIREDDY:

23 Q. Mr. Rozenboom, you were asked on cross about the
24 lawsuit you brought against Diamante Air, Kenner and
25 Gonchar, correct?

Rozenboom - Redirect/Komatireddy

3376

1 A. Correct.

2 Q. I'm going to refer you to 4212, page 3.

3 What was the amount of the outstanding loan?

4 A. \$1,341,046.86.

5 Q. Who were the guarantors on that loan?

6 A. Sergei Gonchar and Phil Kenner.

7 Q. Now, we also looked at 4222, and you testified this
8 payment of \$415,000 was part of an agreement to resolve
9 that loan and that lawsuit, correct?

10 A. Yes.

11 Q. Do you know where he got -- Mr. Constantine got that
12 \$415,000 from?

13 A. I'm not sure where he got that from.

14 Q. We went over the aircraft purchase agreement and
15 counsel asked you about the terms of the purchase.

16 4207, in this purchase agreement, there's
17 another lien called the Constantine lien, correct?

18 A. There is.

19 Q. As of this agreement, the plane goes to AZ Falcon
20 Partners, AZ Falcon Partners has to pay Constantine
21 \$250,000?

22 MR. LARUSSO: Your Honor, beyond the scope of
23 cross. This was never raised.

24 THE COURT: Overruled. You can answer that.

25 A. The aircraft was sold with the understanding that

Rozenboom - Redirect/Komatireddy

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1 those liens were not going to be satisfied by the bank and
2 they would still remain with the aircraft.

3 Q. And, therefore, the owner of the aircraft would be
4 responsible for them?

5 A. They would be attachments to the aircraft so
6 ultimately the owner of the aircraft would be responsible,
7 yes.

8 Q. You were asked about an operating agreement for AZ
9 Falcon and who owned AZ Falcon.

10 You testified someone by the name of the
11 Fergusson owned it and Mr. Constantine was the managing
12 member?

13 A. That's how I remember it, yes.

14 Q. Referring you to 4218, the operating agreement of AZ
15 Falcon Partners that came in yesterday, turning to the
16 last page, when you said Fergusson, is that the Fergusson
17 you're referring to?

18 A. Sue Ellen, yes.

19 Q. As far as you were concerned, she was the owner of AZ
20 Falcon?

21 A. Yes.

22 Q. Finally -- actually, do you know who she is, Sue
23 Ellen Ferguson?

24 A. I actually spoke with her.

25 Q. Is she a hockey player?

Rozenboom - Redirect/Komatireddy

3378

1 A. She is not a hockey player.

2 Q. Finally, referring to C 198, Mr. LaRusso read out to
3 you I believe this line:

4 FYI, I have hired an attorney, Ronald Richards,
5 who represents our entire group as part of the global
6 settlement, all matters between our side and Jowdy, et al,
7 and will have him assist me, Gonchar and Kenner to review
8 and execute whatever settlement docs you/your attorney
9 provides to us.

10 Do you remember that?

11 A. I do.

12 Q. That's an e-mail from Mr. Constantine to you,
13 correct?

14 A. Yes.

15 Q. I'm going to highlight the paragraph above it.

16 Would you read it into the record for us?

17 A. Gonchar and Kenner are counting on me to get the
18 settlement agreement done with you.

19 The object of my being involved is for Kenner
20 and Gonchar to get it settled and not have to spend
21 anymore money with their attorneys.

22 I understand that your intent with respect to
23 your suggestion below is simply to help move things in the
24 right direction, but contacting his attorney for a
25 settlement agreement draft is going to trigger another

Rozenboom - Recross/LaRusso

3379

1 significant legal bill, which is going to make Sergei and
2 Phil blow a gasket.

3 MS. KOMATIREDDY: No further questions.

4 THE COURT: Anything further, Mr. Haley?

5 MR. HALEY: I have no questions of
6 Mr. Rozenboom.

7 Thank you.

8 MR. LARUSSO: Just a few, Judge, if I may.

9

10 RECROSS-EXAMINATION

11 BY MR. LARUSSO:

12 Q. You received this. K 97 was the Diamante Air limited
13 liability operation agreement which listed the members.

14 Do you remember this? Do you recall you
15 discussed that?

16 A. I remember discussing that.

17 Q. Do you know how much each one of the members
18 contributed to Diamante Air?

19 A. I do not.

20 Q. Do you know they contributed over \$250,000 each?

21 A. I do not.

22 MS. KOMATIREDDY: Objection.

23 THE COURT: Mr. LaRusso, when he says he doesn't
24 know, you don't need to ask the next question.

25 MR. LARUSSO: I will move on.

3380

1 BY MR. LARUSO:

2 Q. Would it be fair to say that if Mr. Constantine did
3 not salvage the asset, the asset being a Falcon for these
4 investors, that their equity would have been totally lost?

5 A. I'm not sure.

6 I need to know what their investment is in order
7 to tell you if their investment would be totally lost.

8 But given that the loan wouldn't be paid off in
9 full, I can conclude or extrapolate that would be a fair
10 assessment.

11 Q. Do you recall any efforts made by Mr. Constantine to
12 reconstruct log books for the Falcon 10 using over 30
13 years of maintenance records and sending you a photograph
14 of them via e-mail?

15 MS. KOMATIREDDY: Objection, scope.

16 THE COURT: Overruled. You can answer.

17 A. I know, in a conversation that Tommy and I had, that
18 he was attempting to reconstruct the log books.

19 All the ancillary information that you just gave
20 me, I'm not sure I can answer, but I know he was
21 attempting to reconstruct the log books.

22 Q. In regards to that Constantine loan, did you know
23 what the particulars of that -- the Constantine lien was,
24 do you know the particulars of that?

25 A. No, I personally don't know.

Rozenboom - Recross/LaRusso

3381

1 Q. Were you aware at the time that Mr. Constantine was
2 involved in having the Falcon 10 repaired, both by way of
3 interior work as well as maintenance work?

4 MS. KOMATIREDDY: Objection.

5 THE COURT: Overruled. You can answer if you
6 know.

7 A. I don't know that personally, but Tommy did report
8 that to me early on in him expressing an interest in
9 trying to acquire that aircraft.

10 Q. The bank didn't make any payments towards those, did
11 they, the repairs and maintenance of the plane at this
12 point in time?

13 A. We did not.

14 Q. Do you know if Mr. Constantine paid for them out of
15 his own pocket?

16 A. I do not know the answer to that.

17 MR. LARUSSO: No further questions, your Honor.

18 THE COURT: You can step down, Mr. Rozenboom.

19 Thank you.

20 (The witness steps down.)

21 THE COURT: Okay, the next witness.

22 MR. MISKIEWICZ: The government calls Lynne
23 Lagarde.

24 THE COURT: Ms. Lagarde, if you could come to
25 the witness stand and remain standing once you get there

Lagarde - Direct/Miskiewicz

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1 for the oath.

2

3 LYNNE LAGARDE,

4 called as a witness, having been first
5 duly sworn, was examined and testified
6 as follows:

7

8 THE COURT: Be seated.

9 Please state your name and spell it for the
10 record.

11 THE WITNESS: Lynne Lagarde, L-Y-N-N-E,
12 L-A-G-A-R-D-E.

13 THE COURT: As you're doing, Ms. Lagarde, stay
14 close to the mike and keep your voice up.

15 Thank you.

16 Go ahead, Mr. Miskiewicz.

17 MR. MISKIEWICZ: Thank you, your Honor.

18

19 DIRECT EXAMINATION

20 BY MR. MISKIEWICZ:

21 Q. Good morning, Ms. Lagarde.

22 My name is Jim Miskiewicz. I'm a prosecutor in
23 this case.

24 You are an attorney, are you not?

25 A. I am a retired attorney.

Lagarde - Direct/Miskiewicz

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1 Q. Where were you admitted to practice law?

2 A. The state of Arizona and Kentucky.

3 Q. You know one of the defendants in this case, do you
4 not, Tommy Constantine?

5 A. Yes, I do.

6 Q. You've represented him for a number of years, have
7 you not?

8 A. Yes, I have.

9 Q. Do you see him in the courtroom today?

10 A. Yes, I do.

11 MR. LARUSSO: Conceding identification, your
12 Honor.

13 THE COURT: Okay, the identification is
14 conceded.

15 BY MR. MISKIEWICZ:

16 Q. Fair to say you represented him in a variety of
17 matters for over 20 years?

18 A. Close to 20 years, yes.

19 Q. Now, what is the nature of your practice?

20 A. I'm a land use attorney. I do zoning and municipal
21 work appearing before planning commissions and city
22 councils.

23 Q. Is it a fair statement that you are not a litigating
24 attorney, meaning you don't bring lawsuits?

25 A. No.

Lagarde - Direct/Miskiewicz

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1 Q. That is a fair statement?

2 A. Yes, it is a fair statement. I do not bring
3 lawsuits. I've never been in a courtroom other than this.

4 Q. Well, welcome.

5 What is the name of the law firm that you were a
6 partner?

7 A. Earl, Curley & Lagarde.

8 Q. Now, in May of 2009, by the way, when you were
9 subpoenaed to appear here today, you were also subpoenaed
10 to produce certain records, were you not?

11 A. My law firm was initially subpoenaed and my partner
12 sent records, my former partner.

13 Q. Would you be familiar with what those records look
14 like if they were produced by your former law firm?

15 A. Yes.

16 Q. In or about May of 2009, do you recall receiving,
17 from Mr. Constantine, approximately \$10,000 in legal fees
18 for a matter that your firm referred to as the Dixileta
19 matter?

20 A. You know, I never see the money when it comes in. It
21 is simply posted on the bills. So I probably never knew
22 exactly that that money came in.

23 And I don't know what matter money was sent for
24 at that time because I was working on more than one case
25 for Mr. Constantine, as I explained when I was called, and

Lagarde - Direct/Miskiewicz

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1 I wanted to review my records before I said anything about
2 that billing.

3 And I have reviewed my records and there's at
4 least some confusion about what matter was being paid.

5 Q. Let me show you what's been produced and has now been
6 numbered for identification as Government's Exhibit 3920
7 through Government's Exhibit 3932.

8 Take a look at that and take your time.

9 (Continued on next page.)

10

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Lagarde - Direct/Miskiewicz

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1 BY MR. MISKIEWICZ (Cont'd):

2 Q. First of all, have you seen such documents generated
3 by your law firm in the past?

4 A. Yes, I have.

5 MR. MISKIEWICZ: May I approach one more time, I
6 think I started with 3920.

7 BY MR. MISKIEWICZ:

8 Q. Is that right?

9 A. Yes.

10 Q. Let me add one, 3919, you see that in front of you?

11 A. Yes.

12 Q. What are these documents?

13 A. These are my billing records and they reflect the
14 amount that was billed and the amount that was paid.

15 Q. And they are on the letterhead of Earl, Curley &
16 Lagarde, correct?

17 A. Yes, they are.

18 Q. And they are each dated or months and dates during
19 which the time you were -- before you retired, while you
20 were still a partner at that firm.

21 Correct?

22 A. Yes.

23 Q. And the information that would have been contained or
24 reflected on these documents, would it have been the usual
25 course of business at your firm to keep such records?

Lagarde - Direct/Miskiewicz

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1 A. Yes, it was.

2 Q. And would these records have been kept in the
3 ordinary course of business at your firm?

4 A. Yes.

5 Q. And would the information therein be inputted at or
6 about the time that either the work or the bills were
7 generated, in other words, these were kept
8 contemporaneously with the dates reflected on each one of
9 these documents?

10 A. Yes, they were.

11 The actual work I did ended in 2007, and the
12 bill was paid two years later.

13 Q. Let us just be able to conclude with one question.

14 Are these bids -- you understand what a business
15 record is, correct?

16 A. Yes.

17 Q. Are these business records of Earl, Curley & Lagarde?

18 A. Yes, they are.

19 Q. The government moves for the admission of
20 Government Exhibit 3919 through 3932?

21 THE COURT: You said through, I thought it was
22 3919, 3920 and 3932.

23 Is it more than three documents?

24 MR. MISKIEWICZ: I'm sorry. I'll read them all
25 in.

Lagarde - Direct/Miskiewicz

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1 It's 3919, 3920, 3921, 22, 23, 24, 25, 26, 27,
2 28, 29, 30, 31 and 32.

3 THE COURT: So 3919 through 3932.

4 MR. MISKIEWICZ: Yes, your Honor.

5 THE COURT: Any objection?

6 MR. HALEY: No, sir.

7 MR. LARUSSO: No, your Honor.

8 THE COURT: Those exhibits are admitted.

9 (Whereupon, Government Exhibits 3919 through
10 3932 were received in evidence, as of this date.)

11 BY MR. MISKIEWICZ:

12 Q. Now, you -- I think you volunteered that some of
13 these records were for work done in 2007.

14 A. And before, yes.

15 Q. And before.

16 Could you explain that, and while you are
17 explaining that I'd like to retrieve 3919 because I don't
18 have a copy.

19 A. Do you want me to explain the work that I did?

20 Q. No.

21 Explain what you mean by the fact that some of
22 the work was done and if it was paid in 2007.

23 THE COURT: 2009.

24 MR. MISKIEWICZ: I'm sorry.

25

Lagarde - Direct/Miskiewicz

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1 BY MR. MISKIEWICZ:

2 Q. 2009.

3 A. Tommy was a very good client of mine.

4 He was a very trustworthy client. We had built
5 over the years a very trusting relationship. There were
6 times when Tommy was out of the country or somewhere else
7 and I was not always paid immediately, but I was always
8 paid.

9 Because there had been two years that had
10 intervened -- between the times the bills were paid, there
11 was another matter on which I was billing Tommy at the
12 same time that was his business property in Scottsdale, an
13 office property. When Tommy called to ask me what was
14 owed, I told him he owed about \$9,700, and that's all I
15 told Tommy, and he apparently sent money because the next
16 time after this I reviewed my bills and they were all
17 paid.

18 But Tommy may not have known what bill he was
19 paying and that's why I wanted to review my records and go
20 back and look at the bill on the other matter which was
21 about the same amount, so it was not unusual and not only
22 that, I had other clients who sometimes weren't able to
23 pay right away.

24 In Tommy's case, the city of Scottsdale had put
25 some onerous requirements on him, and I thought he was

Lagarde - Direct/Miskiewicz

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1 being treated unfairly, and so I didn't have any problem
2 waiting to be paid.

3 Q. You felt that he was being treated unfairly with
4 respect to which matter that you represented him on?

5 A. Actually both matters.

6 The city is very rigid on the application of a
7 very sensitive land development and in the commercial land
8 regulations and a lot was being required of Tommy that I
9 thought was unnecessary in both cases.

10 Q. What were both matters?

11 A. One was a drainage situation with regard to some
12 property in north Scottsdale, and the other was the design
13 of the office facility and certain permitting that the
14 city required.

15 Q. The office facility, do you know, was that a business
16 or was it a residential property that you were
17 representing him on in that matter?

18 A. That was a business property.

19 Q. Was that --

20 A. It was a commercial property, and that's why the
21 design regulations applied.

22 Q. Were you at that property during any point in your
23 representation?

24 A. Yes.

25 Q. They were hangars, right?

Lagarde - Direct/Miskiewicz

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1 A. Yes, it was an airpark office hangar facility.

2 Q. At the Scottsdale Airport, correct?

3 A. Correct.

4 Q. And it was -- to your knowledge at that time it was a
5 series of hangars owned by Mr. Constantine?

6 MR. MISKIEWICZ: I'll withdraw the question.

7 A. Yeah, I never was --

8 Q. Was he --

9 MR. MISKIEWICZ: Ma'am, I withdrew --

10 A. I never knew --

11 MR. MISKIEWICZ: I withdrew the question.

12 A. Okay.

13 Q. By the way, fair to say that Tommy Constantine in
14 your years as you have indicated in prior testimony that
15 he was probably your favorite client, correct?

16 A. You know, I hate to insult Tommy, but he was not my
17 favorite client.

18 I had a lot of very good clients and he was one
19 of my favorite clients, I would say that, but I am sworn
20 to tell the truth.

21 Q. Okay.

22 But you trusted him?

23 A. Yes, I did.

24 Q. And that was one of the reasons that despite the fact
25 that sometimes bills were late being paid, you had a good

Lagarde - Direct/Miskiewicz

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1 track record, you knew you were going to get your money
2 back.

3 Correct?

4 A. That's correct.

5 Q. And you also felt that he had good grounds to pursue
6 whatever litigation there was with respect to this
7 drainage thing, as well as the airpark.

8 Correct?

9 A. Correct, and that was not litigation.

10 It was simply administrative proceedings and
11 permits that the city requires of property owners.

12 Q. Land use?

13 A. Land use that was my -- you know, what I was doing
14 for Tommy.

15 Q. Okay.

16 Now, when you bill a client, particularly one
17 like Mr. Constantine who has -- who you represented in a
18 number of different matters, your firm, does it not, it
19 keeps track of what you are billing for and for which of
20 those matters you are billing.

21 Correct?

22 A. Yes.

23 Q. As an attorney, if you have one client who's engaged
24 in numerous matters, whether it's litigation or land use
25 or whatever, as an attorney you keep track of how much

Lagarde - Direct/Miskiewicz

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1 time you worked on the matter.

2 Right?

3 A. Yes, I do.

4 Q. So if you have a phone call and the phone call lasts
5 15 minutes and the phone call is about matter X, you keep
6 note of that and then you charge your client,
7 Mr. Constantine or anybody, a pro rata share of whatever
8 your hourly billing is.

9 Right?

10 A. Yes, I do.

11 Q. And if you have in this hypothetical if there is
12 matter X, Y, and Z, you have a 15-minute call on matter Y
13 or matter Z, each one of those will be billed differently
14 or billed to a different engagement.

15 Correct?

16 A. That's correct.

17 Q. All right.

18 Now, when you receive or your firm --

19 MR. MISKIEWICZ: Withdrawn.

20 BY MR. MISKIEWICZ:

21 Q. Let me actually now show you what's in evidence now
22 as 3919 on the overhead projector.

23 (The above-mentioned exhibit was published to
24 the jury.)

25

Lagarde - Direct/Miskiewicz

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1 BY MR. MISKIEWICZ:

2 Q. Ms. Lagarde, can you see it to your right --
3 actually, I found my copy.

4 It's also on the screen.

5 A. You did take it from me.

6 Q. It's also on the screen to your right.

7 A. Okay.

8 Q. 3919, this indicates the account history for -- from
9 your firm for Mr. Constantine who is listed as the client
10 here?

11 A. Yes.

12 Q. And it indicates there was a payment applied to a
13 previous balance of -- well, a payment of \$9,707.50 was
14 applied.

15 Correct?

16 A. Yes.

17 Q. And he got a discount.

18 A. Yes.

19 Q. Per you?

20 A. Yes.

21 Q. And so the total payment and adjustments made were
22 \$10,575.77, correct?

23 A. Yes.

24 Q. And that wiped out the previous balance?

25 A. Yes, it did.

Lagarde - Direct/Miskiewicz

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1 Q. All right.

2 Do you know what engagement or what case was
3 that --

4 MR. MISKIEWICZ: Withdrawn.

5 BY MR. MISKIEWICZ:

6 Q. What was the second case that you were working on at
7 or about this time?

8 You said there were two, the drainage issue and
9 the airpark.

10 A. The airpark case.

11 Q. In addition to the airpark, what was the drainage
12 issue about?

13 A. The drainage issue was on this case.

14 Q. Was there a second case?

15 A. No, just the airpark case and this case.

16 Those were the two cases that I was working on
17 for Tommy at the time.

18 Q. What property was the drainage about?

19 A. The Pima and Dixileta case was the property on which
20 the drainage issue arose.

21 Q. And that was a residential property, correct?

22 A. Yes, it was.

23 Q. That was Mr. Constantine's personal home, wasn't it?

24 A. It was never actually his home.

25 It was under construction at the time.

Lagarde - Direct/Miskiewicz

3396

1 Q. And do you know why -- what was the drainage issue
2 that you were trying to resolve in this land use case?

3 A. There was a fairly significant wash that ran through
4 Tommy's property.

5 In the desert when there is a significant wash
6 like that with a significant flow, it's designated as a
7 floodway and a floodplain and the city is very strict
8 about how it is to be treated.

9 There was a wall around the property, and it had
10 to be sized correctly and there were some issues about
11 that. It had all been done in the past, but there was a
12 new engineer, and he wanted everything recalculated.

13 Q. Do you know whether or not there was ever an effort
14 to accommodate a helicopter on that property as part of
15 this litigation -- not litigation, but this engagement?

16 A. At the time the City of Scottsdale -- they had no
17 regulations against someone landing a helicopter on the
18 property.

19 And I think Tommy had landed a helicopter on the
20 property, so an issue was raised whether he could continue
21 to do that or whether the city was going to pass a
22 regulation to prevent it. That was a very -- I wouldn't
23 say minor, but a small part of the case, by far the most
24 work was on the drainage.

25 Q. So they were related -- the drainage issue was

Lagarde - Direct/Miskiewicz

3397

1 related to personal or the residential home on which
2 Mr. Constantine at some point landed helicopters?

3 A. Correct.

4 Q. You said the \$9,707 that's received in this or
5 reflected as having been received here, what was this for?

6 What work was that for?

7 A. It was applied to the Pima and Dixileta case.

8 But I'm not sure if that's what Mr. Constantine
9 realized he was paying because the other bill was \$9,700
10 something as well, and it was also two years behind.

11 Q. Let me show you what's been marked for identification
12 as Lagarde 1.

13 That's another invoice from your firm, isn't it?

14 A. Yes.

15 This is the invoice on the airpark case.

16 Q. And, again, that's a bill issued by your office,
17 correct, your firm?

18 A. Yes, it is.

19 Q. During the time that you were still a partner at the
20 firm?

21 A. Yes, it is.

22 Q. While you were doing work for Mr. Constantine?

23 A. Two years after I completed the work for
24 Mr. Constantine.

25 Q. Okay.

Lagarde - Direct/Miskiewicz

3398

1 And kept in the regular course of business at
2 your firm?

3 A. Yes.

4 Q. Maintained there, correct?

5 A. Yes.

6 Q. And there is also some attachment there, is there
7 not?

8 A. Yes.

9 The actual document that you gave me is the
10 letter from my office manager advising that the account
11 balance was \$9,700.53 that was past due and attached to
12 that is the billing statement that showed the last bill
13 that was sent in September of 2007.

14 That letter was dated in September of 2007.

15 Q. And the attachment also is a business record
16 generated, kept, maintained in the regular course of
17 business of your firm during the time you were a partner
18 there.

19 Correct?

20 A. Yes, it was.

21 MR. MISKIEWICZ: The government moves for the
22 admission of Lagarde 1.

23 MR. LARUSSO: No objection, Judge.

24 MR. HALEY: No objection, Judge.

25 THE COURT: Lagarde 1 is admitted.

Lagarde - Direct/Miskiewicz

3399

(Whereupon, Government Exhibit Lagarde 1 was received in evidence, as of this date.)

3 BY MR. MISKIEWICZ:

4 Q. So that we both confirm -- excuse me,

5 MR. MISKIEWICZ: Withdrawn.

6 | BY MR. MISKIEWICZ:

7 Q. One last document I want to show you, what's been
8 marked for identification as 3917.

9 Again, Ms. Lagarde, this is also a payment
10 history for work done by you and/or your firm for
11 Mr. Constantine during the period of time when you were a
12 partner there.

13 | Correct?

14 | A. Yes.

15 This is not the kind of documentation that I
16 normally saw. This was simply kept by the office manager.
17 So I'm not as familiar with this particular piece of
18 paper.

19 Q. So you never saw it before?

20 Is it your testimony you don't know what that
21 is?

22 A. When I asked my partner to send me what he had
23 provided to you he sent me this.

24 But, again, before then, no. I had not seen
25 this. This is not a document that I as an attorney would

Lagarde - Direct/Miskiewicz

3400

1 have ever reviewed. It was simply kept by our office
2 manager.

3 Before that, no, I had not seen that document.

4 Q. All right.

5 Let me show you Lagarde 1, this is the document
6 that is now in evidence.

7 For the record, the first page of Lagarde 1 is
8 on your letterhead dated September 17, 2007, correct?

9 A. Yes, it is.

10 Q. And it's signed by somebody by the name of
11 Judy L. Sullivan?

12 A. Yes, it is.

13 She's our -- was our office manager.

14 Q. And we don't have to read it, but basically this is
15 to advise Mr. Constantine that somebody else, that Steve
16 Hilton, that they have an outstanding balance by your firm
17 for work done by you, correct?

18 A. Yes, that's correct.

19 Q. That's \$9,753?

20 A. Yes.

21 Q. And as you said, that's pretty close to what's now in
22 evidence as 3919, Exhibit 3919, which had a previous
23 balance of \$10,575.77.

24 Correct?

25 A. Yes.

Lagarde - Direct/Miskiewicz

3401

1 Q. The difference is, and I want to see if I can put
2 them next to each other, in what's over on the left, this
3 \$10,000 bill refers to a particular client number, right?

4 A. Yes, that is.

5 Q. What's the client number there?

6 A. 3129.

7 Q. Dash?

8 A. 000.

9 Q. And --

10 A. That referenced the matter number.

11 So, I'm sorry. When you asked me the client
12 number, the client number is 3129. The matter number is
13 dash 000.

14 Q. So 3129 would refer to Mr. Constantine?

15 A. Yes.

16 Q. Dash 000 would refer to a particular --

17 A. Matter.

18 Q. -- matter.

19 Which in this case is the Dixileta matter,
20 right?

21 A. Yes.

22 Q. And then this 2007 document over on the right where
23 there is an outstanding balance of a little over \$9,700,
24 that refers to, again, the same client number, 3129,
25 that's Tommy Constantine, right?

Lagarde - Direct/Miskiewicz

3402

1 A. Yes.

2 Q. And it's dash 001, a different engagement.

3 Right?

4 A. Yes.

5 Q. And in that case, the engagement involved apparently
6 Constantine and Hilton, correct?

7 A. Yes.

8 Q. And you also refer to it as the airpark engagement,
9 right?

10 A. Yes.

11 Q. Below that.

12 A. Yes.

13 Q. So Lagarde 1 has to do with work being done on the
14 airpark and 3919 has to do with the drainage issue at the
15 residential property that Mr. Constantine used to land
16 helicopters on.

17 A. Yes.

18 Q. I'll show you a document that's in evidence,
19 Government Exhibit 1102, and specifically page two.

20 I'm going to focus your attention on a
21 transaction dated 5/19 of 2009. You see that on the
22 screen in front of you?

23 A. Yes, I do.

24 Q. There are a couple of different -- well, there's two
25 different 5/19s there, but I'm asking you to read for the

Lagarde - Direct/Miskiewicz

3403

1 record what's the second one that's listed there in the
2 box that you can see?

3 A. The \$10,000?

4 Q. To who?

5 A. Earl, Curley and Lagarde.

6 Q. Can you read for the record where that money came
7 from?

8 A. Law offices of Ronald Richards.

9 Q. Do you know Ron Richards?

10 A. Pardon me?

11 Q. Do you know Ronald Richards?

12 A. No, I do not, and I never saw the wire transfer.

13 Again, as an attorney, I don't see when bills
14 were paid. They just get paid. It gets noted. I never
15 even knew it was a wire transfer until this matter came
16 up, and I don't know what that Ronald Richards is.

17 Q. So I hate to ask you a negative question, but do you
18 know a Ken Jowdy?

19 A. Pardon me?

20 Q. Do you know anybody by the name of Ken Jowdy?

21 A. No, I do not.

22 Q. Did you do any work on a Ken Jowdy matter for
23 Mr. Constantine?

24 A. No.

25 I have never heard that name.

Lagarde - Direct/Miskiewicz

3404

1 Q. What about doing any work regarding any land
2 acquisitions in Mexico?

3 MR. LARUSSO: Your Honor, I object.

4 THE COURT: No, that's okay.

5 You can answer that.

6 A. No.

7 Q. Were you ever doing any work, land use work for
8 hockey players?

9 A. Yes, I have done land use work for hockey players.

10 Q. Through or as part of your representation of
11 Mr. Constantine?

12 A. No.

13 Q. Now, you said you didn't know -- I think your
14 testimony earlier was you didn't know when you received
15 money, \$10,000, and it was applied towards the Pima and
16 Dixileta engagement, the one with the drainage issues and
17 the helicopter, you didn't know if that was
18 Mr. Constantine's intent.

19 Right?

20 A. Right, because when he called me, I just said around
21 \$9,700, and that was the same for both cases.

22 Q. And you were asked prior to your testimony you know
23 your firm was asked to produce records related to any kind
24 of work you did for Mr. Constantine during this period of
25 time.

Lagarde - Direct/Miskiewicz

3405

1 Correct?

2 A. Yes.

3 Q. Where's the payment for this Lagarde 1?

4 A. Pardon me?

5 Q. Where's the payment, where's the document reflecting
6 payment for Lagarde 1, the airpark?

7 A. In my office billing records.

8 Q. Would you be able to retrieve those later on today
9 and produce them for the court?

10 A. No, I'm not --

11 Q. We have e-mail.

12 A. As you know, I have been in New Orleans in the
13 hospital with my father.

14 I have not been anywhere near Phoenix since he
15 had his surgery. There is no way I can produce those
16 documents any time before the next several weeks, and they
17 were not being paid, as I understood it, directly by
18 Mr. Constantine.

19 You will see Mr. Hilton on that. He was paying
20 those, so I don't know the business relationship between
21 Mr. Hilton and Tommy other than they were partners and
22 there may have been other partners in that property, but I
23 can't produce those records right now.

24 Q. First of all, I'm very sorry for your family crisis.

25 My question simply is this, can somebody else

Lagarde - Direct/Miskiewicz

3406

1 from your firm produce a record showing who paid
2 Mr. Constantine's engagement with respect to the airpark,
3 and, specifically, whether or not it was Mr. Constantine
4 or Mr. Hilton or somebody else?

5 Can somebody do that? Can somebody produce
6 those here for the court and for the jury?

7 A. Those records I brought to my home so that I could
8 review them, so they are at my house.

9 The records were paid by an entity called 82
10 Hangar LLC, or something like that. They had been sent to
11 our office by Mr. Hilton at the time of the billing. I
12 don't know exactly when they were paid.

13 I do know that part of this check -- or this
14 money went to that file as well.

15 Q. So what you are saying, Ms. Lagarde, is that work
16 back in 2007 was paid for, if not entirely then
17 substantially by Mr. Hilton, not Mr. Constantine?

18 A. I can't say that.

19 I don't know what the arrangement was. The
20 bills were being sent from Mr. Hilton's office. They were
21 partners. I can't say that it was Mr. Hilton paying or he
22 and Tommy had an arrangement or a fund that they were
23 using.

24 I never got into the business relationships of
25 my clients.

Lagarde - Direct/Miskiewicz

3407

1 Q. So is it -- are you saying that you don't know
2 whether the airpark balance, whether there even was an
3 airpark balance remaining when this \$10,000 came in from
4 the Ron Richards account?

5 A. Yes.

6 I looked at my files. It was about \$300 balance
7 on that airpark account.

8 Q. So \$300 from the Ron Richards wire transfer would
9 have been applied to the airpark?

10 A. My office would have done that, yes.

11 Q. And then the balance went to the house with the
12 helicopter?

13 A. A helicopter landed there infrequently.

14 I think that's a little bit harsh to say the
15 house with the helicopter. It was the house that had a
16 lot of problems.

17 But, yes, it would have been applied by my
18 office manager to that case.

19 MR. MISKIEWICZ: May I just have a moment, your
20 Honor.

21 THE COURT: Yes.

22 (There was a pause in the proceedings.)

23 MR. MISKIEWICZ: Thank you, Ms. Lagarde.

24 Again, I'm very sorry. I have no further
25 questions.

Lagarde - Cross/LaRusso

3408

1 THE COURT: Cross-examination.

2 MR. HALEY: I have no questions, your Honor.

3 THE COURT: Mr. LaRusso.

4 MR. LARUSSO: May I, your Honor.

5 CROSS-EXAMINATION

6 BY MR. LARUSSO:

7 Q. Ms. Lagarde, my name is Bob LaRusso.

8 I represent Mr. Constantine and we are both very
9 sorry for the situation you are in. I'll try to keep this
10 as short as I can.

11 A. Thank you.

12 Q. The two documents or packages that were shown to you
13 were Government Exhibit 3911 and there were a number of
14 numbers after that. I'm going to place that on your
15 left-hand side.

16 Okay?

17 A. Yes --

18 THE COURT: 3911?

19 MR. LARUSSO: 3919, I apologize, Judge.

20 BY MR. LARUSSO:

21 Q. 3919 and then the subsequent numbers that they put in
22 the record.

23 A. Yes.

24 Q. They also gave you Lagarde 1.

25 MR. LARUSSO: Do you have that?

Lagarde - Cross/LaRusso

3409

1 MR. MISKIEWICZ: I'm sorry, I wasn't listening.

2 THE COURT: Lagarde 1, do you have that?

3 MR. MISKIEWICZ: Yes.

4 MR. LARUSSO: Thank you.

5 BY MR. LARUSSO:

6 Q. I'm going to show you Lagarde 1 and you testified on
7 direct examination that there was confusion about what was
8 being paid.

9 Do you remember that testimony?

10 A. Yes.

11 Q. And you also testified that Mr. Constantine was
12 unaware the payment went to the wrong invoice.

13 Do you remember that testimony?

14 A. Yeah.

15 I would have never told that, yes.

16 Q. What I'd like you to do, just explain to the jury
17 what you meant when you said there was confusion about
18 what was being paid, and use those two invoices that we
19 have been discussing during your testimony?

20 A. I apologize. I'm just a little emotional. It has
21 not to do with this. It has to do with my father who's
22 ill.

23 When I was first called about this, I saw the
24 documents and I said, yes. That money was applied to the
25 Pima and Dixileta case, but I said I know I was working on

Lagarde - Cross/LaRusso

3410

1 another case for Tommy at the same time, and I didn't tell
2 him which case he owed the money on.

3 So I wanted to be sure of which case he was
4 paying and I couldn't be sure because on the phone I just
5 told him \$9,700 and I didn't know which case it was. So
6 that's what the confusion was, and I wanted to be accurate
7 and I didn't want anyone to be misled because I spoke, you
8 know, just very fast and said, oh, yeah, that's what he
9 paid when it may not have been the case.

10 Q. So what did you then look to determine where the
11 money was actually or should have actually been paid to?

12 A. Well, that's why I brought my files home.

13 Q. What did you find after looking at your files in
14 regards to where that payment should have been made to?

15 A. Well, actually the payment was for Pima and Dixileta
16 and it should have been partially there and partially on
17 the other case because the airpark case had been paid by
18 that 82nd Hangar, LLC that had come from Mr. Hilton.

19 But it was still not clear to me whether Tommy
20 knew that that had been paid. That's where I thought the
21 confusion lay and I never made it clear to Tommy what he
22 was paying.

23 Q. You alluded to a conversation with Mr. Constantine.

24 Would that have been at or about the time of the
25 payment which we know to be about May of 2009?

Lagarde - Cross/LaRusso

3411

1 A. Yes.

2 Q. Tell us about that, please.

3 A. Tommy called me, and he said, Lynne, I want to get
4 you paid up. I know it's been a while that I have owed
5 you, you know, what do I owe you?

6 Tommy was always very busy. I didn't go and
7 look at anything. I said, Tom, it's about \$9,700 and
8 that's all I said.

9 Q. Was there any discussion about any document that he
10 may have been alluding to in that conversation?

11 A. No.

12 He didn't allude to any document. He just asked
13 me what he owed me and I told him.

14 Q. And at the time you were telling him what he owed,
15 were you referring to the airpark or were you referring to
16 the home, the residence?

17 A. I honestly can't say what I was referring to.

18 I just have a number in my mind that he owed me,
19 and I know that sounds like I should have known, but I
20 knew Tommy owed me a number because the last letter I saw
21 was on the airpark case and it was \$9,700.

22 Q. You mentioned \$9,700.

23 Would you take a look at the second page, the
24 balance is \$9,818, is that correct?

25 A. Yes, it is.

Lagarde - Cross/LaRusso

3412

1 Q. And how do you describe the difference?

2 A. I really have no idea.

3 I feel embarrassed by that, although it was an
4 error in Tommy's benefit. My bills showed an amount of
5 \$9,818, but my office manager put \$9,753. The only thing
6 I would have seen because I always looked at the letters
7 before they went out, I saw the \$9,753, I wouldn't have
8 seen this invoice. It wouldn't have been attached.

9 So that's what I remembered and that's what I
10 told Tommy.

11 Q. So Tommy was under the impression that the bill that
12 was being paid was the one for the airpark.

13 Is that correct?

14 A. I don't know what his impression was, but because
15 that was the last thing he received from me, I thought
16 that this was the bill he might have thought he was
17 paying.

18 Q. Just to be clear, at the time you were speaking with
19 Mr. Constantine in May of 2009, there were actually two
20 open bills.

21 Is that correct?

22 A. Yes, there were.

23 Q. And your discussions with him were in reference to
24 the airpark.

25 Is that correct?

Lagarde - Cross/LaRusso

3413

1 A. When I spoke to him, I didn't make clear which matter
2 it was.

3 I just said \$9,700.

4 Q. Okay.

5 MR. LARUSSO: May I just have a moment, your
6 Honor.

7 (There was a pause in the proceedings.)

8

9 MR. LARUSSO: Thank you, very much, and my
10 condolences, please, I hope all works out well for your
11 family.

12 THE WITNESS: Thank you.

13 THE COURT: Thank you.

14 Any redirect?

15 MR. MISKIEWICZ: No, your Honor.

16 THE COURT: Thank you, Ms. Lagarde, and good
17 luck with your father.

18 THE WITNESS: Thank you for your accepting the
19 situation, your Honor.

20 THE COURT: Sure.

21 We'll take the morning break. Don't discuss the
22 case.

23 (Jury leaves the courtroom.)

24 THE COURT: Everyone can be seated.

25 Who's next?

3414

1 MR. MISKIEWICZ: Lani Donlan.

2 THE COURT: Are there any issues with respect to
3 her?

4 MR. LARUSSO: I don't even know what she's going
5 to testify to other than maybe signatures.

6 THE COURT: Okay.

7 This deals with Mr. Kenner.

8 MR. MISKIEWICZ: Mostly about signatures and
9 Mr. Kenner and somewhat about a loan she was not party to,
10 but had essentially brokered with respect to penthouse --
11 not the penthouse -- but the Palms condominium unit.

12 MR. HALEY: I will have questions, Judge.

13 THE COURT: I assume she's going to be pretty
14 brief, then, right?

15 MR. MISKIEWICZ: On direct, yes.

16 THE COURT: Okay.

17 MR. MISKIEWICZ: And then we have Jackson
18 Stewart and Glenn Murray.

19 THE COURT: Okay.

20 Let's take a break.

21 (Recess.)

22 (Continued on next page.)

23

24

25

3415

1 (Following a recess.)

2 THE COURT: Please be seated.

3 We'll bring in the jury.

4 MR. MISKIEWICZ: Your Honor, we do have a
5 stipulation that the parties have entered into and we'll
6 read it.

7 THE COURT: Okay.

8 MR. LARUSSO: Your Honor, while we are waiting
9 for the jury, may I just make a request.

10 In regards to one of the witnesses, I don't know
11 if it's going to be this morning or this afternoon,
12 Mr. Jackson Stewart, there was a very tumultuous
13 relationship between my client and Mr. Stewart. I
14 understand that he's being called in regards to work that
15 he had done for Mr. Constantine and payments.

16 If it's just that, obviously I have no problem.
17 I'm just concerned we are going to get into the bad blood
18 between the two of them and I don't see any relevancy in
19 regards to why his testimony would need to get into that
20 area.

21 THE COURT: Do you expect that to come out other
22 than what relates to the payment itself?

23 MS. KOMATIREDDY: Your Honor, I'll proffer the
24 testimony, I'm aware of the bad blood. We discussed with
25 Mr. Stewart this morning we didn't think it was necessary

3416

1 to go into that area.

2 Mr. Constantine made various representations
3 about his wealth in the relevant time frame, 2006, 2007,
4 so we expect the testimony to be about those
5 representations and the payments.

6 THE COURT: Okay.

7 THE CLERK: All rise.

8 (Jury enters the courtroom.)

9 THE COURT: Everyone can be seated.

10 Next witness.

11 MR. MISKIEWICZ: Your Honor --

12 THE COURT: Oh, you have a stipulation.

13 MR. MISKIEWICZ: We do have a stipulation, your
14 Honor, if I may read it into the record now.

15 THE COURT: What number is it?

16 MR. MISKIEWICZ: Sorry about that.

17 It's stipulation No. 35.

18 THE COURT: Is there any objection to
19 stipulation 35 being admitted?

20 MR. HALEY: No, sir.

21 MR. LARUSSO: I believe it relates to Mr. Ross.

22 Is that the number?

23 MR. MISKIEWICZ: Yes.

24 MR. LARUSSO: No objection.

25 THE COURT: Stipulation 35 is admitted and can

3417

1 be read to the jury.

2 (Whereupon, Government Exhibit Stipulation 35
3 was received in evidence, as of this date.)

4 MR. MISKIEWICZ: The stipulation would read in
5 relevant as follows:

6 1. The law firm of Gilmartin, Magence,
7 M-A-G-E-N-C-E, and Ross, LLP, hereafter the Ross firm,
8 assists in the origination and administration of private
9 loans. In 2008 the Ross firm set up the Palms lending
10 trust in order to issue a loan, hereafter the loan,
11 secured by two condominium units at Palms Place in
12 Las Vegas, Nevada, hereafter the Palms condos.

13 Defendant Constantine was a borrower on the loan
14 and defendant Kenner was the guarantor on the loan. After
15 the loan went into default, the Ross firm foreclosed on
16 the Palms condos and sold them to other individuals.

17 Government Exhibits 3507, 3508 and 3511, through
18 3513 are true and accurate copies of loan documents
19 submitted to the Ross firm for the loan.

20 Government Exhibits 3505, 3506 are true and
21 accurate copies of closing statements for sales of real
22 property conducted by Stewart Title of Nevada.

23 Government Exhibits 3509 and 3510 are true and
24 accurate copies of deeds of trust for sales of real
25 property conducted by Stewart Title of Nevada.

3418

1 Government Exhibit 3502 is a true and accurate
2 copy of an accounting of payments made to the Ross firm
3 for the loan.

4 Government Exhibits 3503 and 3504 are true and
5 accurate copies of deeds executed and recorded for the
6 Palms condos.

7 Lastly, Government Exhibit 4408 is a true and
8 accurate copy of a payment ledger for units at Palms Place
9 in Las Vegas, Nevada.

10 Government Exhibits 4409 and 4410 are true and
11 accurate copies of escrow receipts for sales of real
12 property conducted by Stewart Title of Nevada.

13 This stipulation and Government Exhibits 3502
14 through 3513 and 4408 through 4410 are admissible as
15 evidence at trial.

16 THE COURT: So you are offering those exhibit?

17 MR. MISKIEWICZ: We are.

18 THE COURT: Any objection?

19 MR. LARUSSO: No, your Honor.

20 MR. HALEY: No, sir.

21 THE COURT: So the exhibits referenced in the
22 stipulation 35 are admitted.

23 (Whereupon, Government Exhibits 3502 through
24 3513 and 4408 through 4410 were received in evidence, as
25 of this date.)

Donlan - Direct/Miskiewicz

3419

1 MR. MISKIEWICZ: The government calls Lani
2 Donlan.

3 THE CLERK: Please remain standing and raise
4 your right hand.

5 **LANI DONLAN,**

6 having been duly sworn, was examined
7 and testified as follows:

8 THE CLERK: Please state your name and spell it
9 for the record.

10 THE WITNESS: Lani McGuire Donlan, L-A-N-I,
11 M-C-G-U-I-R-E, D-O-N-L-A-N.

12 THE COURT: You can be seated.

13 Ms. Donlan, just pull the mike up close to you
14 and keep your voice up.

15 Okay?

16 THE WITNESS: Okay.

17 THE COURT: Go ahead.

18 MR. MISKIEWICZ: Thank you, your Honor.

19 DIRECT EXAMINATION

20 BY MR. MISKIEWICZ:

21 Q. Good morning, Ms. Donlan.

22 A. Good morning.

23 Q. Ms. Donlan, what do you currently do for a living?

24 A. I sell real estate.

25 Q. And how long have you been in that business?

Donlan - Direct/Miskiewicz

3420

1 A. June 16th will be 19 years.

2 THE COURT: Ms. Donlan, I think you might have
3 accidentally hit the button.

4 THE WITNESS: Oh, it's on.

5 A. June 16th will be 19 years.

6 Q. Where did you originally start working in real
7 estate?

8 A. In Boston, Massachusetts.

9 Q. Is that where you are from?

10 A. Yes.

11 Q. Do you know the defendant -- one of the defendants in
12 this case, Phil Kenner?

13 A. I do.

14 Q. Do you see him in the courtroom today?

15 A. Yes.

16 MR. HALEY: Identification conceded, Judge.

17 THE COURT: The identification is conceded.

18 BY MR. MISKIEWICZ:

19 Q. When did you meet Mr. Kenner?

20 A. 2003.

21 Q. How did you meet him?

22 A. Through Kristie Myrick and Brian Berard, separately,
23 but got to know him through both.

24 Q. Did there ever come a time that you worked either for
25 him or through one of his companies?

Donlan - Direct/Miskiewicz

3421

1 A. Yes, end of '04, early '05.

2 Q. What did you do for Mr. Kenner during that period of
3 time?

4 A. There was a project in Hawaii I was studying to get
5 my real estate brokers -- we were going to be the realtors
6 on -- living in Hawaii selling the property.

7 Q. Does the name Little Isle IV mean anything to you?

8 A. Yes.

9 Q. Were you working for that firm or the other firm?

10 A. It was Big Isle Ventures.

11 Q. Did you ever travel to Hawaii to look at the
12 properties that you were going to be selling?

13 A. Yes.

14 Q. At some point did you travel there with Mr. Brian
15 Berard?

16 A. Yes.

17 Q. How do you know Mr. Berard?

18 A. Through mutual friends.

19 He grew up in Rhode Island -- in Boston. I have
20 friends that played hockey with him, mutual, became
21 friends probably 16 years ago, I'd say 15, 16.

22 Q. Would you say you are still friends?

23 A. Best of friends, yeah.

24 Q. At the time that you were working for
25 Big Isle Ventures and Mr. Kenner, was it strictly

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1 employer-employee or did you become social friends with
2 any of the other employees who were engaged by that firm?

3 A. We were all friends.

4 Q. When you say we were all friends, who are you talking
5 about?

6 A. Phil, Kristie, myself, Johnny Kaiser, guy -- Chris
7 Manfredi, Brian.

8 Q. By the way, did you ever have an opportunity to
9 invest in Hawaii?

10 A. No.

11 Q. Did there come a time or any point in your career
12 that you worked for Prudential Real Estate?

13 A. Yes.

14 Q. And when you did, where would see that located?

15 A. 77 North Washington Street in Boston.

16 Q. From time to time did Mr. Kenner ever visit you
17 there?

18 A. Yeah, one time, yeah.

19 Q. Do you have any approximate knowledge about -- as to
20 when?

21 A. It was '05 and it was either Memorial Day weekend or
22 Labor Day weekend.

23 I remember it was right before the holiday
24 weekend.

25 Q. Any reason why you remember that?

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1 A. Yes.

2 Because I had to stay in the office for an hour
3 while he finished doing his stuff.

4 Q. Do you know what stuff he was doing?

5 A. He was signing names of the -- his clients on to a
6 piece of paper to send over to I thought it was a bank to
7 get them money, to release money for those guys.

8 Q. Is that what he told you?

9 A. Yes.

10 Q. Explain to the members of the jury, when you say sign
11 people's names, first of all, the names of who?

12 Who are you referring to?

13 A. The guys that he was -- advised for, the hockey guys.

14 He had each one of their signatures on separate
15 pages and he was doing them all on one page.

16 Q. Now, when you say the hockey guys, first of all, did
17 you personally meet them?

18 A. Yeah, I knew a handful of them.

19 I didn't meet them all.

20 Q. Who did you know?

21 A. Well, Brian Berard, Greg DeVries, Glenn Murray, those
22 are the moneys -- Jason Woolley, the ones that I knew
23 personally.

24 I met a bunch of the other guys, but we don't
25 have a friendship.

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1 DIRECT EXAMINATION (Continued)

2 BY MR. MISKIEWICZ:

3 Q. And what relationship did those people have to
4 Mr. Kenner, if you know?

5 A. They were friends. They were -- he was, what I
6 thought, their financial advisor.

7 Q. So describe to the members of the jury, what did you
8 see Mr. Kenner doing with respect to the signatures?

9 A. Taking each individual contract, putting it under one
10 piece of paper, and he would sign -- say, I'll use an
11 example.

12 Like Glen Murray's name. He would sign his name
13 and I would photocopy that. Then he would take the next
14 one, Brian Berard, and put it under and sign it onto the
15 same sheet of paper so that all the guys were on one
16 sheet.

17 Q. When you say put a piece of paper, do you mean
18 tracing?

19 A. Tracing.

20 Q. And then eventually all these signatures, did he do
21 it once and then that was it? Or was it multiple times?

22 A. Well, it's photocopies. I would photocopy that and
23 then give him the next one until he was finished, that all
24 the signatures were on this one sheet of paper.

25 Q. And do you know what he did with that piece of paper?

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1 A. He sent it to, I thought the bank. I don't know who
2 he sent it to. But I know it had to do with the
3 financials of the guys.

4 Q. All right. And again, what year is this?

5 A. '05.

6 Q. Are you familiar with an individual by the name of
7 Tommy Constantine?

8 A. Yes.

9 Q. Did you ever meet Mr. Constantine?

10 A. Yes.

11 Q. Do you see him in the courtroom today?

12 A. Yes.

13 Q. Can you point to him and describe an item of
14 clothing --

15 MR. LaRUSSO: We concede the identification,
16 your Honor.

17 THE COURT: Okay. They are conceding the
18 identification.

19 BY MR. MISKIEWICZ:

20 Q. How did you meet Mr. Constantine?

21 A. Through Phil, in Arizona.

22 Q. When he was introduced to you by Mr. Kenner, what if
23 anything did Mr. Kenner tell you about Mr. Constantine?

24 A. They were business partners. They were you starting,
25 like I remember, like a firm, energy drinks, just doing

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1 business.

2 Q. In what year was that?

3 A. I think it was '06. '07.

4 Q. You met him where?

5 A. In Arizona.

6 Q. Do you know an individual by the name of Steven Ross?

7 A. Yes.

8 Q. Who is Mr. Ross?

9 A. He is a lender -- he's an attorney in Boston. He was
10 a lender, more like a lender to people that didn't need to
11 pay high interest rates to get a loan. I knew him all
12 through doing real estate transactions.

13 Q. And I'm sorry. You said, did you from time to time
14 deal with him as part of your real estate work?

15 A. Yes. He would be a closing attorney at some of the
16 deals I worked with. And I just knew him just from being
17 in real estate.

18 Q. Did there ever come a time that you introduced
19 personally, face to face or otherwise, Mr. Ross to either
20 Mr. Constantine or Kenner?

21 A. Yes, both of those, via email.

22 Q. And what was the purpose of making that introduction?

23 A. To help them get financing for the units in Las Vegas
24 till the guys they had lined up to buy it were ready to
25 purchase it.

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1 Q. When you say to get financing, who was looking to get
2 financing?

3 A. Phil and Tommy were looking to get financing. In
4 fact I think it was Ethan Moreau or Owen Nolan wanted to
5 buy the two units from them within like a six-month
6 period.

7 Q. Now, did Mr. Kenner and/or Mr. Constantine tell you
8 they were looking to finance?

9 A. Yes.

10 Q. How did you find that out?

11 A. Phil asked me if I knew anyone who could do the
12 financing.

13 Q. And you thought of Mr. Ross?

14 A. I did.

15 Q. Do you know whether or not there was any further
16 communication after you made this introduction between
17 Mr. Ross and/or the defendants?

18 A. Yes. They were going back and forth about the
19 property. I don't want to say for sure but I believe
20 Steve even went down to Vegas to check it out. He would
21 constantly put me on the emails to keep me abreast of
22 what's going on.

23 Q. Who would put you on the emails?

24 A. Steven Ross.

25 Q. So would you be cc'd on emails that are between

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1 Mr. Ross and the defendants?

2 A. Yes.

3 Q. Showing you what has been marked for identification
4 as -- withdrawn.

5 Do you know whether or not a loan was made?

6 A. Yes, it was made.

7 Q. Do you know what the amount was?

8 A. I believe it was one million.

9 Q. And do you know whatever happened with respect to the
10 repayment on that loan for those Palms condominium units?

11 A. Yes.

12 MR. HALEY: I would object, Judge. It is not of
13 her own personal knowledge.

14 THE COURT: Sustained.

15 BY MR. MISKIEWICZ:

16 Q. Were you in communication? In other words, did the
17 defendants cc you with respect to communications that went
18 back and forth regarding whatever happened to the loan?

19 A. Yes. Steve Ross would just --

20 Q. Just yes.

21 A. Yes.

22 Q. So based on the communications that you were a party
23 to, just yes or no if you know, whatever happened to the
24 loan, meaning communication, between, emails between the
25 defendants and Mr. Ross?

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1 A. Yes.

2 Q. Do you know what happened to the million dollar loan?

3 A. Yes.

4 Q. What happened?

5 MR. HALEY: Judge, I just object on relevance
6 grounds.

7 THE COURT: No. Overruled.

8 You can answer.

9 A. They foreclosed on the units.

10 BY MR. MISKIEWICZ:

11 Q. Who foreclosed?

12 A. They stopped paying on the loan and the taxes and
13 they foreclosed.

14 Q. You say they foreclosed, meaning who foreclosed?

15 A. Steve Ross and the lending people that lent the money
16 foreclosed on the units that they gave the loan for.

17 MR. MISKIEWICZ: May I have a moment, your
18 Honor?

19 (There was a pause in the proceedings.)

20 MR. MISKIEWICZ: No further questions.

21 THE COURT: Cross-examination?

22 MR. LaRUSSO: Your Honor, just briefly can we
23 have a sidebar? I know we have been doing very well.

24 (Continued on the following page.)

25

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1 (Discussion at sidebar ensued as follows.)

2 MR. LaRUSSO: The reason I asked for a sidebar
3 is, my client said he's not on those emails.

4 Do we have the emails? I don't remember ever
5 seeing them. Sorry to do this, judge.

6 MR. MISKIEWICZ: I thought I gave him copies of
7 all the emails. All right. I have additional copies.

8 MR. LaRUSSO: If he is on there, obviously -- he
9 says he wasn't on the emails, so if he was I would like to
10 take look at the emails.

11 THE COURT: Are you going to go first?

12 MR. HALEY: Yes.

13 THE COURT: Why don't you look at them while he
14 is examining.

15 MR. MISKIEWICZ: Judge, I have some emails. I
16 don't know that I have everything but I have some.
17 Whatever I have, have been produced.

18 THE COURT: She didn't say Mr. Constantine was
19 on those emails.

MR. LaRUSSO: She said the defendants. She did.

THE COURT: Do you want to qualify that?

22 MR. MISKIEWICZ: I will.

23 | THE COURT: I didn't catch that.

24 MR. LaRUSSO: Then we don't have to do anything
25 if the government wants to stipulate to that.

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1 MR. MISKIEWICZ: Let me look at the emails.

2 MR. HALEY: Why don't I begin.

3 (Discussion at sidebar was concluded.)

4 (Continued on the following page.)

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1 (The following ensued in open court.)

2 MR. LaRUSSO: Thank you very much, judge.

3 THE COURT: Go ahead, Mr. Haley.

4

5 CROSS-EXAMINATION

6 BY MR. HALEY:

7 Q. Miss Donlan, my name is Rick Haley. I represent Mr.
8 Kenner.

9 A. Um-hmm.

10 Q. You are not simply friendly with Brian Berard but, by
11 your own testimony, the two of you are the best of
12 friends. Correct?

13 A. Yes.

14 Q. And that's a friendship that has gone back how many
15 years, ma'am?

16 A. 15. 16.

17 Q. As you sit here today, that relationship you have
18 with Brian Berard, being best of friends, that's true as
19 you sit here at this very moment. Is that correct?

20 A. Yes.

21 Q. You are aware, are you not, of the dispute between
22 Brian Berard, your best of friend, and Phil Kenner?

23 MR. MISKIEWICZ: Objection to form.

24 MR. HALEY: I will rephrase it, judge.

25 BY MR. HALEY:

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1 Q. Are you aware, ma'am, that there is a deep-seated
2 dispute between Phil Kenner and Brian Berard concerning
3 the relationship Brian Berard had with Phil Kenner as his
4 financial advisor?

5 You are aware of that dispute. Correct?

6 A. Yes.

7 MR. MISKIEWICZ: Objection. I am just asking
8 that there be a clarification of which dispute.

9 MR. HALEY: I will clarify.

10 BY MR. HALEY:

11 Q. Are you aware, ma'am -- withdrawn.

12 Brian Berard has on more than one occasion gone
13 out publicly, has he not, to do interviews with the news
14 media to state to the world his dispute with Phil Kenner?
15 Isn't that true?

16 A. It's Brian's business. Yes.

17 Q. Well, you are aware of the fact that he has gone out
18 publicly to state to the world his dispute with Phil
19 Kenner. Isn't that true?

20 MR. MISKIEWICZ: Objection. Asked and answered.

21 MR. HALEY: No, she said it was his business.
22 She didn't answer this question.

23 THE COURT: Overruled. You can answer the
24 question.

25 A. I'm aware that they have a dispute, if that is the

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1 question you're asking me.

2 BY MR. HALEY:

3 Q. Well, you are aware that he has gone out publicly, he
4 has been quoted in the media with reference to his side of
5 the dispute. Correct?

6 A. Yes.

7 Q. As a matter of fact, take a look at Kenner Exhibit 89
8 and 90, simply for identification, ma'am.

9 A. I'm aware.

10 Q. You are aware of these. Correct?

11 A. Yes.

12 Q. As a matter of fact, the dispute involving Brian
13 Berard and Phil Kenner, as featured in the media, is one
14 in which he is, if you will, allied with John Kaiser.
15 Would you agree with that?

16 MR. MISKIEWICZ: Objection.

17 THE COURT: Overruled.

18 A. I don't know what you are asking me.

19 BY MR. HALEY:

20 Q. Well, the articles that you have seen, I just showed
21 you Kenner Exhibit --

22 A. I don't remember the articles. I have just seen
23 them.

24 Q. Okay. With reference to Kenner Exhibit 90.

25 Having looked at that document, my question is

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1 simply this.

2 Is it fair to state that not only it has been
3 Brian Berard who has publicly pronounced by way of
4 interviews to the media his dispute with Phil Kenner, but
5 also John Kaiser? They have done so together, have they
6 not?

7 A. Yes, there's a dispute between them.

8 Q. My question is, ma'am, isn't it true that the dispute
9 involving Brian Berard's public pronouncements have gone
10 hand in hand with the same public pronouncements and
11 disputes involving John Kaiser, as indicated by what you
12 have in front of you?

13 MR. MISKIEWICZ: Objection, relevancy.

14 A. I don't understand that question.

15 THE COURT: Sustained.

16 Miss Donlan, if the government objects, you have
17 to remain silent until I have ruled on the objection.

18 The objection is sustained as to form. I think
19 we have covered this.

20 MR. HALEY: Very well.

21 BY MR. HALEY:

22 Q. Well, given your relationship with Brian, is it fair
23 to state, ma'am, that as far as the dispute he has with
24 Phil Kenner is concerned, you would be supportive of that
25 dispute rather than nonsupportive?

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1 Is that a fair statement to make, as a general
2 proposition? Yes or no?

3 A. No, because I was very close to Phil Kenner, too.

4 Q. Well, when was the first time you contacted any
5 person associated with law enforcement relative to your
6 testimony concerning what you say was visualizing Phil
7 Kenner trace signatures?

8 When was the first time you did that?

9 A. I didn't contact anybody. I was contacted. I'm not
10 sure of the date. A couple of years ago.

11 Q. Who contacted you?

12 A. I believe was Matt.

13 Q. You are using a first name Matt. Do you mean Special
14 Agent --

15 A. Yes, Matt Galioto, I think.

16 Q. So when you say Matt, you mean Special Agent Matthew
17 Galioto of the Federal Bureau of Investigation. Correct?

18 A. Yes.

19 Q. And do you know, ma'am, if it was Brian Berard that
20 suggested to Matt that he speak with you?

21 A. I don't know that.

22 Q. So I take it, do you have any reason to believe that
23 it was Phil Kenner who contacted Matt to request that the
24 FBI speak with you?

25 A. I'm going back to 2012. I don't remember. I just

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1 remember being shocked with all this stuff. That's it. I
2 don't remember.

3 Q. When you say being shocked with all this stuff, are
4 you talking about --

5 A. Sickened, is what I mean.

6 Q. Oh. And that was a result of what event? Phil's
7 arrest and what you read about the arrest in the media?
8 Is that what you are referring to when you say you were
9 sickened?

10 A. No. I was just sickened because they were friends.

11 Q. You said that you have been selling real estate for
12 the past 19 years. True?

13 A. Yes.

14 Q. And as relates to that profession or occupation, you
15 have dealt with attorneys before. Is that correct?

16 A. Yes.

17 Q. And as a result of that occupation and profession,
18 you have dealt with banks and officials of banks. Is that
19 correct?

20 A. Yes.

21 Q. You have you have been present at closings. Is that
22 true, ma'am?

23 A. Yes.

24 Q. And you understand, ma'am, as a result of that
25 occupation that, let's say for real estate closings, it is

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1 important that persons that are signing the documents are
2 placing let's say their original signatures on the
3 documents unless there is, let's say, a power of attorney
4 that allows for someone to put their signature on the
5 document. Is that true?

6 A. Yes.

7 Q. You say you observed Phil Kenner in 2005-2006, I
8 believe your testimony was, trace various signatures of
9 particular individuals. Is that right?

10 A. Yes.

11 MR. MISKIEWICZ: Objection to the form. It was
12 not 2006.

13 A. Five.

14 BY MR. HALEY:

15 Q. What year was it, ma'am?

16 A. 2005.

17 MR. HALEY: Thank you, Mr. Miskiewicz.

18 BY MR. HALEY:

19 Q. You say that it was in 2005 that you observed Phil
20 Kenner trace signatures of various individuals.

21 Is that what your testimony was? Yes or no?

22 A. Yes.

23 Q. When he did that, as you say, what did you say to
24 him?

25 A. He said all the guys weren't -- it was off season.

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1 The guys weren't around. Everybody was getting along. I
2 assumed that he had the right to do it. He had their okay
3 to do this.

4 Q. So is it your testimony that, when you say you saw
5 him doing this, you said: *What are you doing, Phil?*

6 Is that what your testimony is?

7 A. No. He told me straight out that the guys are all
8 away. Not everybody was in the same place. It was to
9 benefit them. And he had to get this paperwork to, I
10 forget. And it was to benefit the guys. And everyone was
11 getting along. Everybody was in contact with Phil.

12 So I assumed that he had their okay.

13 Q. Now, I know this goes back to 2005, do you recall
14 what he was wearing that day?

15 A. No.

16 Q. And I know you said it was, what, on a Memorial Day
17 weekend?

18 A. I remember it was either Memorial Day or Labor Day
19 weekend. It was a long weekend.

20 Q. Well, we can agree, ma'am, that Memorial Day and
21 Labor Day were not back to back; there were some months
22 between --

23 A. Yes. I don't remember if it was the end of May or
24 the beginning of September. I just remember it was around
25 that time.

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1 Q. And I believe you testified on direct this was the
2 only time that Phil Kenner, as you told us under oath, was
3 present at the Prudential building with you in Boston.
4 Correct?

5 A. As far as I recall, it was the only time that he was
6 in my office. There was extra room. They didn't care if
7 he was there. He was telling people that I worked for
8 about Cabo.

9 Q. When you say there was extra room there in this
10 office, were there other rooms that Phil could go to be
11 private when this building is essentially empty on
12 Memorial Day or Labor Day?

13 Was that a fact? Or was it only the one room
14 that he had to stay in with you?

15 A. The room is this dig, with desks in it. In real
16 estate we work when everybody else is off of work so it
17 makes sense there would be people in the office. It is
18 not like it is a 9-to-5 job.

19 Q. That is not my question, ma'am. My question is
20 simply while you were there. I'm just asking you to
21 reconstruct what you say happened that day.

22 This is a large room with various desks?

23 A. Yes.

24 Q. Is that you are referring to?

25 As relates to this large room, are there other

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1 rooms off the large room where someone can go for, let's
2 say, privacy?

3 A. Yes. They are private offices though. There was a
4 conference room and there are three or four side offices
5 with the people that owned the company. That was their
6 offices.

7 Q. But where you say Phil did the tracing that you
8 observed, was it is in the larger room? Was it in a
9 conference room? Was it in one of the private offices?
10 Where do you say that happened?

11 A. At one of the desks right next to me.

12 Q. But I takes it, ma'am, and I wasn't there, that Phil
13 had an opportunity, given the size of the room, itself,
14 given the fact that there was an adjoining conference
15 room, to do what you said he did, outside your presence.
16 He had the opportunity. Correct?

17 A. No, because you can't go -- the owners of the company
18 would not let somebody they didn't really know into their
19 office to be using their stuff, sit at their desk.

20 Q. But the owners weren't there that day.

21 A. Yes. Mike Lane was there. The people were in and
22 out all day. They would never allow him to go into
23 somebody else's office.

24 Q. What about the conference room?

25 A. It's wide open. It is a glass. You can see in.

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1 It's just a table for people to come in and sign
2 documents.

3 Q. I see. But the conference room, I take it, is
4 separate and distinct from the desk that you say Phil was
5 sitting at next to you to do this tracing. Isn't that
6 true?

7 A. No. It is like where the jurors ar sitting, just a
8 glass window. You can see everything. You can see in.
9 You can see out.

10 Q. I understand that, ma'am, but is there -- it is a
11 glass wall. But at least that wall, the glass provides
12 some privacy, does it not, between the location where you
13 say Phil was sittings next to you, and, if persons were in
14 the conference room? Is that a fair statement?

15 A. Yes.

16 Q. Have you ever had occasion, ma'am, as you worked at
17 this location to see people in the conference room where
18 let's say their backs are turned to you and you cannot
19 physically see whether they are signing a paper or what
20 they are doing with a document?

21 Has that occurred in the past?

22 A. I don't even know. I don't understand what you are
23 asking me.

24 Could you see into the conference room? Yes. I
25 never took time to look in there.

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1 Q. On the day that you --

2 A. He wasn't in conference room.

3 Q. I understand that, ma'am. My question is simply
4 this.

5 On the day that you say Phil Kenner was seated
6 next to you next to a desk, was there anything physically
7 preventing him from moving to a different part of the
8 office or into the conference room in order to conduct
9 this tracing of signatures that you say occurred? That is
10 my question.

11 A. I don't remember. I don't remember if the conference
12 room was occupied. I don't remember.

13 Q. All right. Was anyone else with you, ma'am, who was
14 in a position to see Phil Kenner trace these signatures as
15 you say occurred? Anyone else?

16 A. No. I don't know. People were in and out of the
17 office. Nobody was asking him what he was doing. In real
18 estate everybody works for themselves. Nobody is paying
19 attention to what somebody else is doing. They knew a
20 friend of mine was using a desk.

21 Q. But you were paying attention because --

22 A. Because I had to make the copies. Yes, I was paying
23 attention.

24 Q. The incident, you told us, occurred in 2005. Is that
25 true?

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1 A. Yes.

2 Q. And after you saw Phil as you say signing or tracing
3 various signatures of hockey players that you knew --
4 correct?

5 A. Yes.

6 Q. -- you then told each one of these hockey players
7 what you saw Phil doing it. Yes or no?

8 A. No.

9 Q. Well, again, who was Mr. Ross?

10 A. Steven Ross. He is an attorney in Boston. He
11 worked, he does law firm work and he also works for a
12 secondary loan company lending money.

13 Q. And the loan involving Phil Kenner and Steve Ross
14 occurred in 2009. Is that correct?

15 A. 2008.

16 Q. 2008. And this was a loan wherein Phil Kenner was
17 signing documents because he was a guarantor. Is that
18 correct?

19 A. Yes.

20 Q. And it was an instance where money was being
21 submitted, bank money, to let's say Phil Kenner and Tommy
22 Constantine for the purpose of acquiring this loan. Is
23 that true?

24 A. Yes.

25 Q. And at that point in time how would you describe your

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1 relationship with attorney Ross?

2 A. Fine. Good?

3 Q. Well, given your occupation and being in the field,
4 ma'am, have you ever had an instance where there was a
5 claim that documents during a banking transaction
6 involving real estate may or may not have been forged, or
7 things of that nature?

8 A. I didn't understand that.

9 Q. I would like you to understand so I will rephrase the
10 question.

11 You say you saw Phil Kenner tracing someone
12 else's signature on a document to be submitted to a bank.
13 That is your testimony signature, is it not?

14 A. Yes.

15 Q. And armed with that knowledge you told us a moment
16 ago you never told any of the hockey players that that
17 occurred. True?

18 A. No.

19 Q. Did you ever tell attorney Ross words to the
20 effect -- by the way, what was his first name?

21 A. Steven Ross.

22 Q. That was his first name?

23 A. Yes.

24 Q. Four years later, armed with that knowledge --

25 A. Three years later.

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1 Q. -- when you were involved with a real estate
2 transaction where Phil Kenner was a borrower, did you ever
3 tell attorney Ross words to the effect: *Steve, this is a*
4 *banking transaction involving signatures, involving an*
5 *obligation for Phil Kenner to repay, and I've got to tell*
6 *you something, I saw Phil Kenner four years ago tracing*
7 *the signatures of other persons outside their presence?*

8 Did you ever say anything like that?

9 A. No because I didn't think --

10 Q. The question is simply this.

11 Did you ever say anything like that in any form
12 or any substance to Steve Ross at any point before the
13 closing or after the closing? Yes or no?

14 A. No.

15 Q. When the loan was foreclosed on, as you told us, that
16 meant, did it not, that loan payments weren't made and
17 Phil Kenner, at least pursuant to your testimony, did not
18 for whatever reason fulfill his contractual obligation
19 under the loan. Isn't that true?

20 A. Yes.

21 Q. And when that occurred, ma'am, did you not have a
22 conversation with Steven Ross to the effect: *You know,*
23 *Steve, I'm not surprised because I've got to tell you --*

24 A. No, I didn't.

25 Q. Ma'am, it's fine. Usually you have to wait for the

Donlan - Cross/Mr. Haley

3447

1 question to be concluded before you answer the question.

2 But okay. That's fine.

3 Did Brian Berard know you were coming here to
4 testify as a witness in this trial? Yes or no?

5 A. Yes.

6 Q. When was the last time you had any conversation with
7 Brian Berard concerning the fact that you were being
8 called here to testify?

9 A. I was here yesterday, so I saw Brian yesterday.

10 Q. And before that, before yesterday, when was the last
11 time you had an opportunity to speak with Brian Berard
12 concerning the fact that you were being called here to
13 testify as a witness for the government?

14 A. Monday. I saw him Monday.

15 Q. And if you recall, before that time when was the last
16 time you had a conversation with Brian Berard concerning
17 the fact that you were being called here to testify as a
18 government witness?

19 A. We didn't really have a conversation. He knew I was
20 coming. I don't remember the last time we discussed it.

21 Q. Well, he knew, did he not, the reason you were called
22 as a government witness? Isn't that true?

23 Brian Berard knew the reason you were being
24 called as a government witness. Isn't that true?

25 A. Yes.

Donlan - Cross/Mr. Haley

3448

1 Q. Before your testimony here today, were you
2 interviewed by any of the prosecutors and/or the FBI
3 agents assigned to the case, including Matt?

4 A. Was I talked to by them before this, today?

5 Q. Yes.

6 A. Yes.

7 Q. Do you recall the first time you talked to them
8 before today?

9 A. Two years ago.

10 Q. Do you recall the last time you talked to them before
11 today?

12 A. Monday.

13 Q. And where did that conversation take place?

14 A. Here when I got to the -- sorry. Yesterday, when I
15 got to the courthouse.

16 Q. Who was present during the course of that
17 conversation?

18 A. Jim. Matt. Josh.

19 Q. And just for purposes of the record, when you say
20 Jim, you are speaking of James Miskiewicz, attorney James
21 Miskiewicz. Is that correct?

22 A. Yes.

23 Q. And just for purposes of the record, when you say
24 Josh, you are referring to Special Agent Josh Wayne of the
25 Internal Revenue Service?

Donlan - Cross/Mr. Haley

3449

1 A. Yes.

2 Q. And you know who Matt is, for purposes of the record.

3 How long did that meeting with James Miskiewicz
4 and Josh take place?

5 A. Ten minutes.

6 Q. You answered their questions. Is that true?

7 A. Yes.

8 Q. When you answered their questions, did you see any
9 one of the group taking notes of what you stayed to them?

10 A. I don't think so. I don't remember.

11 Q. Before that time on Monday was there a time that also
12 you were interviewed by Jim, Josh, and Matt concerning
13 your appearance here today?

14 A. I think it was like February.

15 Q. Of what year?

16 A. 2015.

17 Q. And who was present during that meeting?

18 A. I believe it was all three. It was on the phone.

19 Q. It was on the phone?

20 A. Yes.

21 Q. As relates to that conference call, were you advised
22 that the discussion you were having with them, they were
23 taking notes of that conversation?

24 A. I don't remember.

25 Q. Now, you say that you were with Brian Berard in

Donlan - Cross/Mr. Haley

3450

1 Hawaii back many years ago. Is that true?

2 A. Yes.

3 Q. Do you recall what year that was?

4 A. Yes. That was '05. We were there for Phil Kenner's
5 birthday.

6 Q. You and Brian came out together, I take it, on the
7 same flight?

8 A. Brian, Phil, Kristie Myrick, and myself.

9 Q. Did you see some of the property that was to be part
10 of what we are calling the Hawaii land project?

11 A. Yes.

12 Q. You know what I mean by the Hawaii land project. Is
13 that correct?

14 A. Yes.

15 Q. And with reference to the Hawaii land project, did
16 you see documents and paperwork as pertains to that either
17 in Phil's possession, Brian's possession, or Kristie
18 Myrick's possession?

19 A. I don't remember.

20 Q. Well, was it your impression that this Hawaii land
21 project was real?

22 A. Yes.

23 Q. I mean, you didn't have an impression, ma'am, that
24 Phil Kenner was truing to engage in any sort of -- I'll
25 withdraw that question.

Donlan - Cross/Mr. Haley

3451

1 Did there come a point in time when you left the
2 employ of Phil Kenner?

3 A. Excuse me?

4 Q. I'm sorry, ma'am. I turned my back. I apologize.
5 That was rude.

6 Did there come a point in time that you --
7 withdrawn.

8 Were you employed by Phil Kenner during any
9 period of time?

10 And I apologize. You may have testified to that
11 on direct.

12 A. Yes.

13 Q. Did there come a point in time where you left his
14 employ? Yes or no?

15 A. I didn't leave. It was just Hawaii was sold and in
16 Mexico it was, we got terminated.

17 Q. Who terminated you in Mexico?

18 A. I was under the impression it was Ken Jowdy who told
19 me that everyone just got laid off.

20 Q. Now I'm going to ask you to take a look, ma'am, at a
21 document received in evidence as Kenner Exhibit 93.

22 You are entitled to take a look at the entire
23 document but let me ask you to take a look at the last
24 page of that document.

25 A. Um-hmm.

Donlan - Cross/Mr. Haley

3452

1 Q. And given your relationship with Brian Berard over
2 the years, would you say you have some familiarity with
3 his signature?

4 A. Yes.

5 Q. Do you see his signature on that document?

6 A. Yes. It looks like his signature.

7 Q. Okay. In other words this --

8 A. I know what it says. I don't know exactly what it
9 looks like. I know what it looks like. That resembles
10 it. (Sic.)

11 Q. Well, you had no reason to -- do you have reason to
12 believe that this signature is a forgery?

13 A. No.

14 Q. Other than that instance you claim in Providence,
15 Rhode Island, were there any other instances where you
16 claim that you saw Phil Kenner tracing someone's signature
17 over -- a piece of paper.

18 A. That was in Boston, not Providence.

19 Q. Excuse me. You are correct. In Boston.

20 A. No.

21 Q. As relates to Kenner Exhibit 95. Take a look at that
22 document.

23 A. I can't validate this is his signature, no. I think
24 it looks like it but I don't know.

25 Is that what you are asking me?

Donlan - Cross/Mr. Haley

3453

1 Q. I haven't asked you a question yet. I just want you
2 to take a look at it.

3 A. Okay.

4 Q. Have you taken a look at it?

5 A. Yes.

6 Q. Do you see Brian Berard's signature on that document?

7 A. I do.

8 Well, I don't if it is his. I see a signature
9 that says Brian Berard. But it reassembles the signature.
10 It looks like his.

11 Actually -- yes.

12 Q. Well, you hesitated a moment. Actually what?

13 A. It just didn't look like a B. That's all.

14 Q. So is there some question -- ma'am, I don't want --

15 A. I'm not a signature analyst. I don't know. It looks
16 like and just think, I don't know, Brian's? Yes. I don't
17 know.

18 Q. Ma'am, are you here pursuant to a subpoena where the
19 subpoena was served upon you either by a federal agent,
20 process server, or a US Marshal, stating that you should
21 be here today?

22 A. I don't believe so. I wasn't served.

23 I don't really know what subpoena means so...

24 Q. It would be a document that says actually *Subpoena* on
25 top of it.

Donlan - Cross/Mr. Haley

3454

1 A. No.

2 Q. That begins --

3 A. I haven't. Sorry.

4 Q. What a subpoena is is a document that says *Subpoena*
5 on it and you will see language: "You are commanded to
6 appear."

7 Were you served with that sort of document --

8 A. No.

9 Q. -- in order for you to be here today?

10 A. No.

11 Q. So it is fair to state that you are here essentially
12 voluntarily? The government asked you to come here today
13 to testify. Isn't that true?

14 A. Yes.

15 Q. And did Brian likewise encourage you in some way to
16 be here to testify as a government witness? Yes or no?

17 A. No.

18 Q. Well, he didn't advise you that you should not come,
19 did he?

20 MR. MISKIEWICZ: Objection.

21 MR. HALEY: I will withdraw that, judge.

22 BY MR. HALEY:

23 Q. The document that you say you saw Phil Kenner signed
24 by way of tracing signatures, is it your testimony that
25 all of those signatures were being traced onto one single

Donlan - Cross/Mr. Haley

3455

1 page? Is that your testimony?

2 A. Yes.

3 Q. And what was above the signatures as you -- you were
4 there. Tell us what was above the signatures that you say
5 you saw Phil tracing on this one piece of paper? What did
6 it say on top of it?

7 A. It was one piece of paper. I didn't read it. I just
8 knew that he was doing this to benefit the guys. And
9 everyone was in a happy place so I thought it was okay. I
10 didn't read the form. I just made copies.

11 Q. Well, so my question was this, ma'am. What was above
12 the, on the paper? What was above the area where you say
13 you saw Phil tracing these signatures? What did it say up
14 top?

15 A. I didn't read it.

16 Q. Well, you knew it was a -- did it say bank statement?
17 Withdrawn. You said on direct --

18 A. It didn't say it was a banking statement.

19 Q. I see. Well, it was your impression that it was a
20 financial document. That is the best of your memory. Is
21 that what you are saying?

22 A. I was under the impression that it had something to
23 do with Hawaii and I assumed it was being sent over to a
24 bank. I don't remember what it was. I just remember it
25 took an hour to do the signatures.

Donlan - Cross/Mr. Haley

3456

1 Q. So your statement that it was a financial document,
2 that is really based on an assumption. Correct?

3 A. An assumption. Yes.

4 Q. And your best memory is that it had something to do
5 with Hawaii. Correct?

6 A. Yes.

7 Q. I assume, ma'am, that when this occurred in 2005, did
8 you retain -- you -- any copies of the documents that you
9 say you saw Phil signing and then I believe I said you
10 copied them as well. Correct?

11 A. I made copies of them as he was doing it.

12 Q. And did you retain copies of these documents? Yes or
13 no?

14 A. Not that I know of. I thought I had someone, emailed
15 but I don't know. I was trying to scan them to send to
16 him so he could send them out.

17 Q. Did you retain your email going back to 2005?

18 A. No, I don't think so.

19 Q. When you said a moment ago I thought --

20 A. I said I saved a lot of stuff that had to do with
21 Hawaii but it wasn't paperwork.

22 I made him the copies. I sent them out. I
23 don't know. I don't know.

24 Q. Well, what you did retain in terms of these emails,
25 did you provide those documents to the government?

Donlan - Cross/Mr. Haley

3457

1 A. Not that I know of.

2 Q. Well, did the government ask you for the emails that
3 you say were generated as relates to things Phil Kenner
4 asked you to do and things of that nature?

5 A. I sent them emails I had between us, but I don't
6 remember exactly which ones.

7 Q. Well, did the government ever ask you if you have an
8 email including the attachments reflecting this instance
9 where you claim you saw Phil Kenner --

10 A. I don't remember.

11 Q. You don't remember whether they asked you for that?

12 A. Probably. I don't remember. I'm assuming they did.
13 I just don't remember.

14 Q. Well, as relates to what you just testified to,
15 ma'am, is there some means by which we can obtain a copy
16 of this document you say you saw Phil tracing signatures
17 on? That is my question.

18 A. I don't know. I don't know. It's in '05. I don't
19 have it. I have the memory of it. It's just something I
20 really remembered.

21 Q. I know you are not certain whether or not it occurred
22 on Memorial Day or Labor Day, but do you know what part of
23 the weekend it occurred: Saturday, Sunday, Monday?

24 A. No. I'm thinking Thursday or Friday.

25 Q. I see. And did you know in advance that Phil was

Donlan - Cross/Mr. Haley

3458

1 coming out to meet with you, as you say?

2 A. He came to the Boston often.

3 Q. In 2005 he came to Boston often. Is that your
4 testimony?

5 A. In general. I mean, he came out a couple of times.
6 I don't remember exactly. He came a good amount of times
7 to Boston. It wasn't a planned trip. I just remember him
8 coming in.

9 Q. The other times Phil came the Boston, do you know
10 whether he met with or who he saw or where he was?

11 A. I don't. He would go see guys that he dealt with
12 that played in the area. He would go out with myself. He
13 became friends with my friends.

14 Q. When was the last time you spoke with Phil Kenner?

15 A. 2010.

16 Q. And during that conversation with Phil Kenner, I take
17 it you and he discussed what you say you saw him doing?

18 A. No.

19 Q. Well, let me finish for this gentleman here.

20 A. Sorry.

21 Q. I take it when you last spoke with Phil Kenner in
22 2010, you and he discussed what you say you saw him do in
23 2005 at your offices in Boston. Did you discuss that with
24 him?

25 A. No.

Donlan - Cross/Mr. Haley

3459

1 Q. Do you recall approximately when in 2010 you spoke to
2 Phil about this?

3 A. I didn't speak to Phil about this.

4 Q. Oh. Do you recall approximately when in 2010 you had
5 this last conversation with Phil? Was it the early part
6 of the year, the middle part of the year, the latter part
7 of the year?

8 A. Mid.

9 Q. Was that a face-to-face conversation?

10 A. No. He was in Hawaii. My sister Allie was living
11 down there the last time I spoke to him. He wanted to see
12 my sister.

13 Q. So I take it, ma'am, at no point in time following
14 this event in 2005, at least up to the point in time you
15 last saw Phil Kenner in 2010, you and he ever had a
16 discussion where you said words to the effect: *Phil, what*
17 *was that all about? You know that document that I saw you*
18 *sign other people's names? What was that all about?*

19 You never asked him that?

20 A. No.

21 Q. I know you told us earlier, ma'am, that you never
22 told any of the hockey players, the specific ones that you
23 say you saw Phil tracing their names, about what happened.

24 You never told them. Is that correct?

25 A. Not until later on. Like two-thousand probably

Donlan - Cross/Mr. Haley

3460

1 eleven, ten.

2 Q. Who do you say you told?

3 A. I remember I told Jason Wooley and Brian Berard.

4 Q. And let's say when you told Brian Berard, what did he
5 say in response to what you told him?

6 A. He didn't know what the document was. And just I
7 just had a memory of that happening so I don't remember
8 what his reaction was.

9 Q. Well, when you told Jason Wooley what you saw, what
10 did he say to you?

11 A. I don't remember.

12 Q. Other than these two people -- well, did you ever
13 tell Glenn Murray this? Yes or no?

14 A. No. I haven't spoken to Glenn.

15 Q. Well, you certainly would be able to speak with
16 Glenn, would you not? You could find out where he was and
17 give him a call and talk to him about it?

18 A. Yes.

19 Q. Any prohibition that you are aware of that would
20 prevent you from doing so?

21 A. No.

22 Q. Other than Jason Wooley and Brian, as you say, did
23 you ever tell any other hockey players?

24 A. No, I don't remember.

25 Q. When you say *no*, *I don't remember*: Is the answer:

Donlan - Cross/Mr. Haley

3461

1 *No, I did not? Or: I may have and I don't remember?*

2 What is your testimony?

3 A. I don't remember.

4 Q. So I take it you have no memory of what their
5 reaction was when and if you ever told them. Correct?

6 A. No.

7 MR. HALEY: May I have one moment, judge.

8 (Counsel and client confer.)

9 BY MR. HALEY:

10 Q. Ma'am, I'm going to ask you to take a look at a
11 document marked Kenner Exhibit 99. Take your time.

12 Do you recognize that document?

13 A. No. I don't remember this but yes, I remember the
14 loan.

15 So I recognize me being on there. I just don't
16 really remember the email.

17 MR. MISKIEWICZ: The government stipulates to
18 its admissibility.

19 MR. HALEY: Thank you, judge.

20 THE COURT: What number?

21 MR. HALEY: Kenner Government Exhibit 99.

22 THE COURT: Any objection, Mr. LaRusso?

23 MR. LaRUSSO: No objection.

24 THE COURT: Defendant's Exhibit 99 is admitted.

25 (Defense Exhibit 99 in evidence.)

Donlan - Cross/Mr. LaRusso

3462

1 Q. One final question. Can we agree that in June of
2 2008 -- withdrawn.

3 Do you see your email address on Kenner Exhibit
4 99?

5 A. Yes.

6 Q. Finally, ma'am. In or about the time that Mr. Ross
7 was involved in the loan involving the million dollars in
8 guarantee, did you have the ability to communicate with
9 Mr. Ross via email? Yes or no?

10 A. Yes.

11 MR. HALEY: I have no further questions. Thank
12 you.

13 MR. LaRUSSO: I have just like two questions, if
14 you don't mind.

15 THE COURT: Sure.

16

17 CROSS-EXAMINATION

18 BY MR. LaRUSSO:

19 Q. Good afternoon, Miss Donlan.

20 You testified that the, I will call it the Ross
21 loan, at some point went into foreclosure. Is that
22 correct?

23 A. Yes.

24 Q. Is that around 2010?

25 A. I believe yes. Probably -- it was definitely 2010.

Donlan - Redirect/Mr. Miskiewicz

3463

1 Q. And to your knowledge do you know if Mr. Constantine
2 ever met with or spoke to Mr. Ross prior to the condos
3 going into foreclosure?

4 A. I know that they were in contact. I don't know how
5 much they spoke. It was my understanding that they were
6 all in emails together.

7 Q. Do you know if Mr. Constantine was on the mail like
8 you, on a cc?

9 A. I thought he was on some of them. I don't remember.

10 Q. I will just show you what has been marked for
11 identification LD-1.

12 Just take a look at this one document.

13 Does refresh your recollection --

14 A. Yes.

15 Q. -- that he was cc'd, like you?

16 A. Yes.

17 MR. LaRUSSO: No further questions, Judge.

18 THE COURT: Redirect?

19 MR. MISKIEWICZ: Briefly.

20

21 REDIRECT EXAMINATION

22 BY MR. MISKIEWICZ:

23 Q. Miss Donlan, you were asked by Mr. Haley a series of
24 questions about whether you understood that eventually
25 there it was a dispute between Mr. Berard and Mr. Kenner.

Donlan - Redirect/Mr. Miskiewicz

3464

1 Do you remember those questions?

2 A. Yes.

3 Q. And you said you were sickened, I believe, at some
4 point.

5 A. Yes.

6 Q. Would you describe to the members of the jury, what
7 was your relationship with Mr. Kenner during the period of
8 time that you knew him up until the last time you spoke to
9 him?

10 A. We were very, very close friends. And I would say
11 for a period of time we were very, very good friends.

12 Q. And simultaneously were you very, very close friends
13 with Mr. Berard?

14 A. Yes.

15 Q. And continue to be. Correct?

16 A. Yes.

17 Q. And is this your first time testifying in court with
18 respect to any matter having to do with Mr. Kenner?

19 A. No.

20 Q. You know a Kristie Myrick?

21 A. Yes.

22 Q. You know there was a lawsuit?

23 A. Yes.

24 MR. HALEY: Judge, I think this is going beyond.

25 THE COURT: Sustained. It is beyond the scope.

Donlan - Redirect/Mr. Miskiewicz

3465

1 BY MR. MISKIEWICZ:

2 Q. Well, did you ever participate in any way to try to
3 help Mr. Kenner, between the time you met him and the last
4 time you spoke to him, with respect to any civil
5 litigation?

6 A. Yes.

7 Q. You testified in his behalf in a lawsuit?

8 A. I did. Yes.

9 Q. Do you have any grudge against him?

10 A. No. Saddened. That's it.

11 Q. Withdrawn.

12 I'm sorry. *Saddened*?

13 And you were asked a series of questions about
14 trying to pinpoint when did that event occur at the
15 Prudential office: Memorial Day or Labor Day weekend.

16 Do you have any recollection, where did you go
17 or what did you do after this one-hour episode of making
18 copies?

19 A. If I can remember, I was going away. I either went
20 to Nantucket, if it was Memorial Day. Or we went to New
21 York.

22 Right after Labor Day it was right before the US
23 Open. Phil had come to New York so I can't remember if he
24 was there on that or I was just getting out of the office
25 to go to Nantucket.

Donlan - Redirect/Mr. Miskiewicz

3466

1 Q. When you say we, who do you go with?

2 A. Kristie Myrick came.

3 Q. And Mr. Kenner was part of that?

4 A. The one in New York he was.

5 Q. Okay. So if this happened on the Labor Day weekend,
6 that would have been sometime around the US Open?

7 A. Yes.

8 Q. So is it fair to say that you traveled to various
9 places together as friends with Mr. Kenner --

10 A. Yes.

11 Q. -- over a period of time.

12 And lastly, why didn't you tell either Mr. Ross
13 or any of the hockey players about this tracing until, as
14 you said, much latter?

15 A. I believed that he was doing it truly to help the
16 guys. They all trusted each other, got along, and it was
17 for their benefit.

18 Q. You didn't think there was anything wrong or
19 suspicious about it?

20 A. No.

21 Q. You were friends with Brian Berard. Did you ever
22 tell him?

23 A. They were friends so I just thought he was doing the
24 right thing.

25 MR. MISKIEWICZ: No further questions.

Donlan - Recross/Mr. Haley

3467

1 MR. HALEY: Briefly, judge.

2

3 RECROSS-EXAMINATION

4 BY MR. HALEY:

5 Q. We can agree, can we not, Miss Doan, that there is no
6 longer any friendship between you and --

7 A. Yes.

8 Q. -- Phil?

9 A. Sorry.

10 Q. Let me finish. I think you know what the question
11 might be.

12 A. Sorry.

13 Q. For this gentleman's sake.

14 We can agree, can we not, Miss Donlan, that
15 there is no longer any friendship that exists between Phil
16 Kenner and Brian Berard as you sit here today? Isn't that
17 true?

18 A. Yes.

19 Q. And as a matter of fact. Would you say that not only
20 is there no longer a friendship between the two of them,
21 but the relationship between the two of them, meaning Phil
22 Kenner and Brian Berard, who is still one of your best
23 friends, is one of personal, deep-seated personal dislike?

24 A. Sorry?

25 MR. HALEY: Okay. Judge, I have no further

1 questions.

3468

2 THE COURT: You can step down. Thank you.

3 (The witness was excused.)

4 THE COURT: Let's take the lunch break. We will
5 reconvene at 2 o'clock. Is that long enough? 2 o'clock.

6 Please don't discuss the case. Have a good
7 lunch.

8 (Lunch recess taken at 1:10 pm.)

9

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3469

1 A F T E R N O O N S E S S I O N

2

3 THE CLERK: All rise.

4 THE COURT: Please be seated. Let's bring in
5 the jury and the next witness.

6 MS. KOMATIREDDY: Your Honor, we would like to
7 move in a few documents by certification as discussed
8 yesterday. I discussed it with defense counsel and
9 there's no longer an objection and then we will be calling
10 Glen Murray.

11 THE COURT: Okay.

12 THE CLERK: All rise.

13 THE COURT: Please be seated.

14 The government can proceed.

15 MS. KOMATIREDDY: At this time we would like to
16 move in several stipulations, stipulations marked 41
17 through 46.

18 THE COURT: Any objection?

19 MR. LARUSSO: I didn't know the numbers, but I
20 signed them and have no objection.

21 MR. HALEY: No objection. I recognize my
22 signature, Judge. I have no objection to those exhibits
23 going into evidence.

24 THE COURT: Stipulations 41 through 46 are
25 admitted.

3470

(Government's Exhibits 41 through 46 in evidence.)

3 MS. KOMATIREDDY: Those stipulations reference
4 Government's Exhibits 4404 through 4407, 4403. The
5 foregoing are law firm records.

6 Government's Exhibit 715, an escrow company
7 record, Government's Exhibit 3907 through 3909 and 4401
8 through 4402 which are bank records and business records.
9 We also move those into evidence.

10 THE COURT: Any objection to those exhibits as
11 per the stipulation coming in?

12 MR. LARUSSO: No.

13 MR. HALEY: No, sir.

14 THE COURT: All those exhibits are admitted into
15 evidence as well.

16 (Government's Exhibits 4404 through 4407, 403,
17 715, 3907 through 3909 and 4401 through 4402 in evidence.)

18 MS. KOMATIREDDY: At this time, I would like to
19 read stipulation 45 in relevant part.

On May 12, 2009, Nussbaum & Gillis, PC, received a payment in the amount of \$500,000 on behalf of the defendant Constantine.

23 The payment came in the form of a wire transfer
24 from an account in the name of the law offices of Ronald
25 Richards.

3471

1 One day after receiving the foregoing payment,
2 an employee of Nussbaum & Gillis, PC, remitted the
3 \$500,000 to a representative of Stephen J. Hilton Family
4 Trust; hereinafter the Hilton Trust.

5 As part of a settlement agreement with the
6 Hilton Trust to paydown a loan and any other obligations
7 owed to the Hilton Trust by Tommy Constantine, Constantine
8 Management Group, and Avalon CMG, and to get Avalon CMG
9 out of bankruptcy.

10 Government's Exhibit 4303 is a true and accurate
11 copy of an order dismissing the bankruptcy case of Avalon
12 CMG pursuant to the foregoing settlement agreement.

13 Government's Exhibit 4304 is a true and accurate
14 copy of a check drawn on the bank account of Nussbaum &
15 Gillis, PC, and Harris Bank and the confirmation of
16 receipt of the bank.

17 On May 27, 2009, Nussbaum & Gillis, PC, received
18 a payment in the amount of \$747.14 on behalf of the
19 defendant Constantine.

20 That payment came in the form of a wire transfer
21 from an account in the name of the law offices of Ronald
22 Richards.

23 The payment was applied to outstanding legal
24 fees for work performed by Nussbaum & Gillis, PC, on
25 Avalon CMG's bankruptcy case.

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1 Government's Exhibits 4301 and 4306 are true and
2 accurate copies of portions of monthly account statements
3 for the bank account of Nussbaum & Gillis, PC, at Harris
4 Bank.

5 This stipulation and Government's Exhibit 4301,
6 4303, 4304 and 4306 are admissible in evidence at trial.

7 At this time, the government moves those
8 exhibits into evidence.

9 THE COURT: Any objection?

10 MR. LARUSSO: No, your Honor.

11 MR. HALEY: No, your Honor.

12 THE COURT: Those exhibits are admitted as well.

13 (Government Exhibits 4301, 4303, 4304 and 4306
14 in evidence.)

15 MS. KOMATIREDDY: Lastly, your Honor, we would
16 like to move in several exhibits pursuant to the business
17 records certifications.

18 The exhibits have been marked Government's
19 Exhibits 3331 through 3336, 3341 R, 3342 through 3349,
20 3339, 3902, 3340 and 3903 through 3906.

21 These are business records of various racing
22 companies.

23 THE COURT: Any objection?

24 MR. LARUSSO: No, your Honor.

25 MR. HALEY: No, sir.

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1 THE COURT: Those exhibits are admitted into
2 evidence.

3 (Government's Exhibits 3331 through 3336, 3341
4 R, 3342 through 3349 in evidence.)

5 MS. KOMATIREDDY: And Government's Exhibits 3940
6 through 3947, which are business records of Cabin
7 Crafters, Inc.

8 THE COURT: Any objection?

9 MR. LARUSSO: No, your Honor.

10 MR. HALEY: No, sir.

11 THE COURT: Those exhibits are admitted as well.

12 (Government Exhibits 3940 through 3947 in
13 evidence.)

14 MS. KOMATIREDDY: Thank you, Judge.

15 MR. MISKIEWICZ: The government calls Glen
16 Murray.

17 THE COURT: Mr. Murray, if you could come up to
18 the witness stand over here and remain standing for the
19 oath.

20
21 GLEN MURRAY,

22 called as a witness, having been first
23 duly sworn, was examined and testified
24 as follows:

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1 THE CLERK: Please state your name and spell it
2 for the record.

3 THE WITNESS: Glen, G-L-E-N, Murray,
4 M-U-R-R-A-Y.

5 THE COURT: Be seated, Mr. Murray, and just pull
6 the mike close to you and keep your voice up.

7 Go ahead, Mr. Miskiewicz.

8 MR. MISKIEWICZ: Thank you, your Honor.

9

10 DIRECT EXAMINATION

11 BY MR. MISKIEWICZ:

12 Q. Good afternoon, Mr. Murray.

13 Mr. Murray, what do you currently do for a
14 living?

15 A. I work for the LA Kings Hockey Club.

16 Q. What do you do for the LA Kings?

17 A. Hockey operations.

18 I work with the draft pick players that are
19 coming on our team.

20 Q. Prior to your current position, what did you do?

21 A. I played professionally.

22 Q. You were in the NHL?

23 A. Yes.

24 Q. And what position did you play?

25 A. Forward.

Murray - Direct/Miskiewicz

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1 Q. How long did you play in the NHL?

2 A. 17 years.

3 Q. How old were you when you started?

4 A. 19.

5 Q. What year was that?

6 A. 1990, '91, '92.

7 Q. When did you retire from pro hockey?

8 A. Six years ago now.

9 My last season was '08 or '09, or '09, '10. I
10 can't remember. That's bad. One of those years.

11 Q. Do you know one of the defendants in this case, Phil
12 Kenner, Phillip Kenner?

13 A. Yes.

14 Q. And how long have you known Phillip Kenner?

15 A. Probably since '94, maybe '95, '93.

16 Q. How did you meet him?

17 A. Through a friend of one of the players I played with
18 on the team.

19 Q. What team was that?

20 A. Boston.

21 Q. Do you remember who the friend was who introduced you
22 to Mr. Kenner?

23 A. Yes.

24 It was Joe Juneau.

25 Q. He was another player, correct?

Murray - Direct/Miskiewicz

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1 A. Yes.

2 Q. Playing for Boston at the time?

3 A. Yes.

4 Q. Do you see Mr. Kenner in the courtroom today?

5 A. Yes.

6 MR. HALEY: Identification conceded, Judge.

7 THE COURT: The identification has been
8 conceded.

9 MR. MISKIEWICZ: Thank you.

10 BY MR. MISKIEWICZ:

11 Q. When you were introduced to Mr. Kenner, did you, at
12 any point, hire him for any services?

13 A. He was my financial advisor I guess you can say
14 eventually within a few years of meeting him.

15 Q. And give us a ballpark approximately of what year
16 would that have been?

17 A. I don't know exactly, but I would say ballpark
18 between '93 and '95 or 6.

19 Q. What were you hiring him to do when you hired him as
20 your financial advisor?

21 A. Just to kind of look after my money or just to give
22 loans or mortgages, whatever they may be, different things
23 that I didn't really know that and as I look back didn't
24 have time to kind of understand or take care of.

25 Yes, I hired him to do that for me.

Murray - Direct/Miskiewicz

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1 Q. Were you in your early 20s when you hired him?

2 A. Yes.

3 Q. And did he manage any stocks or bond portfolios that
4 you had by way of savings?

5 A. Did he manage it? I don't know if he did.

6 I know he worked for a company called State
7 Street I think it was back in the day. I don't know if he
8 actually took care of the bonds or stocks.

9 Q. Are you familiar with whether or not Mr. Kenner went
10 on to different companies after working for State Street?

11 A. Well, I think it was State Street too. I can't
12 remember the next one, the second one.

13 Q. There was a second one?

14 A. There was another one, but I can't remember the
15 names.

16 There was Freedom Capital, State Street,
17 Standard Advisors I think it was.

18 Q. Do you know whether or not there came a time that
19 Mr. Kenner was working for himself on his own?

20 A. I just remember the other one, Assante it was called.

21 I'm sorry, can you repeat the question again?

22 Q. Do you remember whether or not Mr. Kenner ever went
23 out and started working for himself, his own company?

24 A. I think that was the one, Standard Advisors.

25 Q. When he did that, were you still -- was he still your

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1 financial advisor?

2 A. Yeah.

3 I switched from whichever was the last one to
4 Standard Advisors, yes.

5 Q. And when he was your financial advisor working on his
6 own as Standard Advisors, did you have any stock or bond
7 portfolio invested at that time if you recall?

8 A. Yeah, but that was through Charles Schwab.

9 Q. But you had an account at Charles Schwab?

10 A. Yes.

11 Q. Generally speaking, what were the nature of your
12 investments at that time through your portfolio with
13 Charles Schwab?

14 A. Just the stocks and bonds, like I said.

15 Q. Did there come a time that you invested in something
16 that's been referred to in this trial as the Hawaii land
17 deal?

18 A. Yeah, I invested.

19 Q. When did you do that?

20 A. I couldn't give you an exact date.

21 Q. Approximately when?

22 A. I would be guessing, but late '90s, maybe 2000s. I
23 don't know. I can't remember.

24 Q. Do you recall the name Big Isle IV or Little Isle IV?

25 A. That sounds familiar. Those sound familiar.

Murray - Direct/Miskiewicz

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1 Q. Did it have anything to do with this Hawaii land
2 deal?

3 A. I think so.

4 Q. I'm going to show you what's been admitted into
5 evidence as Government's Exhibit 1520.

6 Showing you on the screen now something that's
7 in evidence as Government's Exhibit 1520, do you see your
8 signature at the bottom?

9 A. Yes.

10 Q. Does that look like your signature?

11 A. Yes.

12 Q. For the record, could you tell us in bold what does
13 it say there?

14 A. Please wire 100,000 using the following instructions.

15 Q. That wire was coming out of an account of yours?

16 A. Charles Schwab, yes.

17 Q. Where was it going?

18 Who is the beneficiary of the \$100,000?

19 A. Big Isle IV it says here.

20 Q. Would that have been at or about the time you
21 invested in the Hawaii land deal?

22 A. I think so.

23 Q. Now, who first spoke to you about investing in a real
24 estate venture in Hawaii?

25 A. Phil.

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1 Q. What, if anything, did he say?

2 A. I have an opportunity. We have some great land to
3 buy and we're going to develop it.

4 Q. What, if anything, were you going to get in exchange
5 for your \$100,000?

6 A. I don't know, hopefully profit, get your money back
7 and more.

8 Q. Where was the money supposed to go, to what end was
9 the money supposed to be spent?

10 A. Towards the property.

11 Q. The property where?

12 A. In Hawaii, Big Isle IV.

13 Q. Did you, at some point, transfer your stock and bond
14 fund from Charles Schwab to a different institution?

15 A. Not that I know of, no.

16 Q. Are you familiar with a company by the name of
17 Northern Trust bank?

18 A. Yes.

19 Q. Did there ever come a time that you agreed to open a
20 line of credit through Northern Trust bank?

21 A. I don't remember agreeing to it, but I know that it
22 happened.

23 Q. And was this done in connection with the Hawaii
24 investment or anything else?

25 A. The Hawaii investment.

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1 Q. As you sit here today, you don't have an independent
2 recollection of agreeing to it, but do you believe at some
3 point you had a conversation with Mr. Kenner about it?

4 A. About the Hawaii project?

5 Q. The line of credit.

6 A. Yes. I would assume I did, yes.

7 Q. So what, if anything, do you recall Mr. Kenner
8 telling you the line of credit was going to be used for
9 with respect to the Hawaii project?

10 A. I think, if I can remember, the money was for the
11 Hawaii project, to develop the project, develop the land
12 and pay the people that are looking after it and whatever.

13 Q. Now, during that period of time, and I'm going to
14 show you another document that's also in evidence.

15 I'm going to ask you if this refreshes your
16 recollection about transferring assets over to Northern
17 Trust.

18 I'm showing you what's in evidence as
19 Government's Exhibit 1523.

20 And as you see at the top, it says dated October
21 26, 2004. It's directed to Charles Schwab.

22 Do you see that?

23 A. Yes.

24 Q. Do you see where the body of the wire transfer order
25 or letter, whatever you want to call it, says, dear

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1 Charles Schwab and Company, do you see that?

2 A. Yes.

3 Q. It's asking that a million dollars be sent from your
4 Schwab account to Northern Trust.

5 Do you see that?

6 A. Yes.

7 Q. Does that help refresh your recollection at all that
8 you did at some point transfer funds and open an account
9 in Northern Trust?

10 A. I mean, I don't really remember this document.

11 Q. Do you have any doubt that's your signature?

12 A. No.

13 It looks like my signature, yes.

14 Q. So just today, or in 2015, you don't remember a
15 specific wire transfer from October 2004, but do you have
16 any doubt at some point you had agreed to do this?

17 A. Yes.

18 Q. If you agreed to do it, who would have been advising
19 you at that time?

20 A. Phil.

21 Q. And do you have any recollection of how much of a
22 line of credit at Northern Trust was ultimately extended
23 to you?

24 A. No, I don't remember the exact amount.

25 Q. Did you get any statements from Northern Trust during

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1 the time that the line of credit was open?

2 A. I did get statements, but it didn't necessarily
3 have -- I got that for maybe a month or two. They didn't
4 come very often. Very rarely did I get a statement, but I
5 recall having statements from Northern Trust.

6 Q. Showing you what's also in evidence as Government's
7 Exhibit 2176, and focusing on the heading there.

8 For the record, this is an account statement,
9 correct?

10 A. Yes.

11 Q. In whose name?

12 A. In my name.

13 Q. Do you remember getting a statement that looks like
14 this at some point?

15 A. Maybe. It looks familiar but...

16 Q. You don't recall?

17 A. Yeah. That's probably the statement.

18 MR. HALEY: Mr. Miskiewicz, what exhibit is
19 that?

20 MR. MISKIEWICZ: 2176.

21 MR. HALEY: Thank you.

22 BY MR. MISKIEWICZ:

23 Q. Now, what we were just looking at is a statement for
24 the period March 1, 2009, to March 31, 2009.

25 Back in 2004, when a million dollars was

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1 transferred over to Northern Trust Company from your
2 Charles Schwab account, do you recall getting statements
3 back then?

4 A. Statements from?

5 Q. Northern Trust?

6 MR. HALEY: I believe that was asked and
7 answered.

8 THE COURT: Now he's asking about 2004. He's
9 asking whether he got it in that time frame.

10 A. Can you repeat the question again.

11 Q. At or about the time that your million dollars was
12 transferred over to Northern Trust, and you opened up a
13 Northern Trust account, do you recall getting any
14 statements back then, back in 2004?

15 A. No.

16 Q. I show you a document that's also in evidence,
17 Government's Exhibit 2137.

18 I'm going to just highlight a part of this
19 exhibit so we can all see it.

20 In the upper left-hand corner it says Glen
21 Murray, correct?

22 A. Yes.

23 Q. I'm going to show you the whole thing. You can look
24 at the paper copy.

25 Mr. Murray, have you ever seen that document

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1 before?

2 A. No.

3 Q. Is this the first time you're seeing it?

4 A. Yes.

5 Q. You've had interaction or interviews with law
6 enforcement agents prior to your testimony here today,
7 correct?

8 A. Yes.

9 Q. Has anybody ever shown you that exhibit?

10 A. No.

11 Q. So you're absolutely sure this is the very first time
12 you're seeing it?

13 A. Yes.

14 Q. Do you see where it indicates the earliest date is
15 10/29/2004, and there's something that says new note at
16 the top of the first page, do you see that?

17 A. Yes.

18 Q. Do you see where a couple of lines down, November 10,
19 2004, there's a comment that says note increase?

20 A. Yes.

21 Q. And the amount is \$1 million?

22 A. Yes.

23 Q. And then balance it says a million?

24 A. Yes.

25 Q. Now, did anybody, I know you said you didn't see this

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1 document, but did anybody, in or about November of 2004,
2 tell you that your line of credit was drawn up and down in
3 the amount of a million dollars?

4 A. No.

5 Q. When did you learn that, if you did, at any point if
6 you recall?

7 A. Today.

8 Q. Did there come a time that you were given a
9 notification from Northern Trust about a default?

10 A. No.

11 Q. Do you know what the status is of this line of
12 credit, as you sit here today?

13 A. I would assume it's paid off.

14 Q. Who would have paid it?

15 A. I don't know.

16 Q. I'm going to go back to an exhibit I showed you a
17 moment ago, Government's Exhibit 2176 in evidence.

18 Do you see it on the screen next to you?

19 A. Yes.

20 Q. I'm going to direct your attention to the third page
21 of that exhibit, particularly the box where it says
22 financial summary, do you see that?

23 A. Um-hum, yes.

24 Q. Do you see, at the very bottom line, where it says
25 total under the column change?

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1 A. Yes.

2 Q. In parenthesis, it's -- do you know what the
3 parenthesis refers to in accounting?

4 A. No.

5 Q. Well, would you just read what does it say in
6 parenthesis for purposes of that line under the column
7 change?

8 A. The total at the bottom?

9 Q. What is that last number?

10 A. 1,249,775 and 40.

11 Q. So \$1,249,775.40?

12 A. Yes.

13 Q. Do you know whether or not -- you don't know if
14 that's a positive or negative?

15 A. No.

16 Q. There are a number of other exhibits that have been
17 entered into in this trial, and I'll take you through a
18 couple. I have questions about what's depicted in these.

19 Government's Exhibit 22, and I will focus in on
20 a section of that.

21 This depicts a withdrawal from a line of credit
22 in the name of Michael Peca.

23 Do you know who Michael Peca is?

24 A. Yes.

25 Q. Who is he?

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1 A. He's a hockey player. He used to be a hockey player.

2 Q. You never played with him?

3 A. I did when I was 16, 17 years old I played with him.

4 Q. Is that in a youth league or NHL?

5 A. No, it was like the junior leagues.

6 Q. There is an indication here that during this period
7 of time \$60,000 was drawn from his line of credit and went
8 through an account in the name of Little Isle IV ventures,
9 and that \$5,817.80 was paid through your line of credit,
10 Northern Trust, and the transaction period is April 23,
11 2007.

12 At this time, did you owe Michael Peca any
13 money?

14 A. No.

15 Q. Did he owe you money?

16 A. No.

17 Q. Did he borrow money or did you lend him money at all?

18 A. No.

19 Q. Did you know, at this time in 2007, anything about
20 the transactions that are depicted in that chart?

21 A. No.

22 Q. Did Mr. Kenner tell you that?

23 A. No.

24 Q. Showing you what's in evidence as Government's 23,
25 again, this is for the period May 18, 2007, again \$101,000

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1 draw down against Mr. Peca's line of credit, of which
2 \$9,495.77 was paid to your line of credit.

3 Did you know that was happening when it happened
4 at this time?

5 A. No.

6 Q. Again, at any point did you owe Mr. Peca any money?

7 A. No.

8 Q. And if I were to go through another series of charts
9 like this, and ask you whether or not you owed, for
10 instance, Darryl Sydor or Owen Nolan or William Ranford or
11 any other NHL hockey player, at that time did you owe them
12 money?

13 A. No.

14 Q. Did you loan them money?

15 A. No.

16 Q. If there are wire transfers showing drawdowns from
17 your line of credit during this period of time, were you
18 ever made aware that that was happening at that time?

19 A. No.

20 Q. Mr. Murray, you said you did -- you were not aware of
21 a default on your line of credit, correct?

22 A. Correct.

23 Q. I'm showing you what's been received in evidence as
24 Government's Exhibits 2125, and it's dated March 19, 2009.

25 It's directed to you, correct?

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1 A. Correct.

2 Q. This is a Manhattan Beach California address?

3 A. Yes.

4 Q. Were you living there at that time?

5 A. Yes, that's where I live.

6 Q. Do you have any recollection of seeing this notice of
7 default and intent to sell collateral?

8 A. No.

9 Q. 2126, also in evidence, is a letter talking about
10 taking control of assets pledged for that line of credit
11 and sent -- it doesn't say who it's sent to other than
12 it's regarding your account.

13 Did you know that assets were being liquidated
14 to payoff a line of credit?

15 A. No.

16 Q. Mr. Murray, are you familiar with a company by the
17 name of Eufora?

18 A. Yes, vaguely.

19 Q. How did you become familiar with that company?

20 A. Through Phil.

21 Q. And what, if anything, did -- when you say Phil, you
22 mean Mr. Kenner?

23 A. Mr. Kenner, yes.

24 Q. What, if anything, did Mr. Kenner tell you about
25 Eufora?

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1 A. That it was a credit card company getting started.

2 Q. Did he tell you who was running the business?

3 A. Yes.

4 Q. Who?

5 A. Tommy Constantine.

6 Q. Did you ever personally meet Mr. Constantine?

7 A. Yes, once.

8 Q. Would you recognize him if you saw him again today?

9 A. Yes.

10 Q. Do you see him in the courtroom?

11 A. Yes.

12 MR. LARUSSO: Concede the identification, your
13 Honor.

14 THE COURT: Yes.

15 BY MR. MISKIEWICZ:

16 Q. Where did you meet Mr. Constantine?

17 A. In Manhattan Beach, California.

18 Q. Where you were living?

19 A. That's where I live, yes.

20 Q. Did he say anything to you about Eufora during that
21 meeting?

22 A. Just about the credit card company.

23 Q. What did he tell you?

24 A. I can't really remember exactly what it was, but they
25 were doing -- just explaining it to me, but I can't

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1 exactly remember what it was going to be or do.

2 Q. Do you recall whether or not -- do you recall making
3 a \$166,000 investment back in 2004?

4 A. Yes.

5 Q. And showing you what's also in evidence as
6 Government's 1522, this is a document that's dated
7 September 27, 2004.

8 Is that your signature at the bottom?

9 A. Yes.

10 Q. And it's directed to who?

11 Who is the recipient of these instructions?

12 A. The recipient is Eufora.

13 Q. That's where the money is being sent to, Eufora, is
14 that what you mean?

15 A. Yes, that's what I mean.

16 Q. Where is the money coming out of?

17 A. My Charles Schwab.

18 Q. In the amount of 166,000?

19 A. Yes.

20 Q. And you intended to invest money in Eufora at that
21 time, correct?

22 A. Correct.

23 Q. Did you do that based on anything that either
24 Mr. Kenner or Mr. Constantine told you regarding the
25 company?

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1 A. Yes, that's why I invested in it.

2 Q. Did they indicate to you -- I know you said you don't
3 recall right now what they said in 2004 about the company,
4 but whatever they said about the company, were you
5 convinced it was a potentially good investment?

6 A. Yes.

7 Q. No guarantee, right?

8 A. Is there ever?

9 Q. Just making sure.

10 A. All right.

11 Q. When you sent the money, did you understand the money
12 was going to be used for Eufora?

13 A. Yes.

14 MR. HALEY: Judge, too late.

15 BY MR. MISKIEWICZ:

16 Q. Now, did there come a time that you invested
17 additional sums of money in Eufora?

18 A. Not that I recall, no.

19 Q. I'm going to show you what's been received in
20 evidence as Government's 2211.

21 This is a statement from Johnson Bank for
22 Eufora, LLC, do you see that?

23 A. Yes.

24 Q. And it indicates here that there's a deposit in the
25 form of an incoming wire on 12/29, and the 12/29 that

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1 we're talking about here is the end of 2008; do you see
2 that?

3 A. Yes, I do.

4 Q. So here it says it's an incoming wire into the Eufora
5 account in the amount of \$100,000, and can you read who's
6 the originator or the ORG of that?

7 A. Glen Murray, 1320 10th Street, Manhattan Beach.

8 Q. That's where you were living at the time?

9 A. Yes.

10 Q. Do you have any recollection authorizing this wire
11 payment into Eufora at this time, 12/29/2008?

12 A. Did it come from my Charles Schwab?

13 Q. That's a good question.

14 There's an incoming wire in your name. Did you
15 have a Charles Schwab account at the time?

16 A. Yes. What year is that?

17 Q. 12/29/2008.

18 A. Yes.

19 Q. Do you have any reason to believe that that was some
20 other Glen Murray at --

21 A. No.

22 Q. Do you know whether or not you authorized that
23 payment -- is it possible you authorized that payment into
24 Eufora at the time?

25 A. Quite possibly, yes.

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1 Q. You, even though you don't recall, you might have had
2 a conversation with Mr. Kenner or Constantine or somebody
3 else at the time and decided to invest additional money?

4 MR. LARUSSO: Objection, your Honor.

5 THE COURT: Sustained as to form.

6 BY MR. MISKIEWICZ:

7 Q. Do you know whether or not Mr. Kenner and Constantine
8 just took your money, or do you think you authorized them
9 to deposit \$100,000 in your name into Eufora?

10 A. Yes, I think I would have authorized the money into
11 Eufora, yes.

12 Q. You just don't recall right now?

13 A. I don't recall.

14 Q. You have no doubt, and there's no reason to doubt
15 that you had a conversation like that, you were trying to
16 put money into the company at that time?

17 A. Yes.

18 Q. I do want to show you though the next couple of pages
19 in that Exhibit 2211, specifically page 3 all the way down
20 at the bottom of 2211.

21 This transaction now is -- the date is 12/31/08,
22 the last day of 2008, New Year's Eve. There's \$100,000
23 going out, do you see that?

24 A. Yes, I do.

25 Q. The beneficiary that's listed here is Timothy R.

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1 Gaarn.

2 Do you know Timothy R. Gaarn?

3 A. At the time? Now I've come to know who he is, but at
4 the time, no.

5 Q. Did you, insofar as this 100,000 represents any
6 portion of your deposit into the account a couple days
7 earlier, did you know that your money was going to
8 Mr. Gaarn's account?

9 A. No.

10 Q. If you were investing in Eufora in late December
11 2008, would you have authorized the money to go into the
12 Eufora account and back out to Mr. Gaarn?

13 MR. HALEY: Objection.

14 THE COURT: Sustained as to form.

15 BY MR. MISKIEWICZ:

16 Q. Where did you intend your money to go?

17 You said you didn't remember specifically this
18 \$100,000 transaction. But if, assuming you authorized it,
19 where did you intend the money to go to?

20 A. Eufora.

21 Q. What about going to Eufora, but immediately going out
22 to Mr. Gaarn, did you authorize that?

23 MR. HALEY: I object.

24 THE COURT: Sustained.

25 MR. MISKIEWICZ: All right.

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1 BY MR. MISKIEWICZ:

2 Q. I show you an exhibit that's been received in
3 evidence as 2301, Wachovia account in the name of Timothy
4 R. Gaarn, and specifically on page 1, the account summary
5 shows an opening balance on 12/30 of zero, deposits of
6 \$100,000.

7 Do you see that?

8 A. Yes, I do.

9 Q. And the deposit that's referenced there came in,
10 \$100,000 from Johnson Bank, the originator being Eufora.

11 Did you know this was happening at the time?

12 A. No.

13 Q. On page 2 of 4 of that exhibit, on 12/31, after the
14 \$100,000 came in, \$81,127.

15 Do you see that, a funds transfer?

16 A. Yes.

17 Q. Who is it sent to?

18 A. Phillip Kenner.

19 Q. Did you intend, in or about December '08 when you
20 sent the \$100,000 to Eufora, to have at least a portion of
21 that money sent to Phillip A. Kenner?

22 A. No.

23 Q. Did you know it was happening?

24 A. No.

25 Q. Did anybody tell you that you were buying shares that

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1 belonged to any other investors in Eufora at that time?

2 MR. HALEY: Objection, your Honor.

3 THE COURT: That's okay. You can answer that.

4 A. No.

5 Q. Did you know whether or not Mr. Kenner owned any
6 shares of Eufora at or about this time?

7 A. I didn't know. I wasn't sure, no.

8 Q. I'm going to show you what's in evidence as
9 Government's 2214.

10 Again, this is a Johnson bank account in the
11 name of Eufora.

12 Do you see that?

13 A. Yes.

14 Q. And then towards the bottom here, under deposits,
15 this is 2009, March 19, 2009, do you see an incoming wire
16 of \$100,000?

17 A. Yes.

18 Q. And who is the sender of the wire?

19 A. Myself.

20 Q. Do you have any independent recollection, as you sit
21 here today, of authorizing that \$100,000 wire?

22 A. No.

23 Q. Going to page 3 of that statement, the day after your
24 wire arrived, do you see a transaction indicating \$100,000
25 going out?

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1 A. Yes.

2 Q. Who is it going out to?

3 A. To Timothy Gaarn.

4 Q. Back then, you said you didn't know who he was?

5 A. Correct.

6 Q. How did you learn or have you learned who he is?

7 A. Yes.

8 I guess he was working for Eufora, someone told
9 me.

10 Q. Did Mr. Kenner or Mr. Constantine tell you that?

11 A. No.

12 Q. Is it possible you learned that during your
13 preparation for testimony today?

14 MR. HALEY: Judge, I object.

15 THE COURT: Sustained.

16 BY MR. MISKIEWICZ:

17 Q. But you don't know, as you sit here today on your
18 own, you don't know who Mr. Gaarn is?

19 MR. HALEY: Objection, your Honor, asked and
20 answered.

21 Objection. Sorry for the speaking objection.

22 THE COURT: I thought he testified before at the
23 time. I don't remember him asking as you sit here today.

24 As you sit here today, what do you know about
25 Mr. Gaarn?

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1 THE WITNESS: Just I think he worked for Eufora.

2 That's it.

3 BY MR. MISKIEWICZ:

4 Q. Did you know about this \$100,000 wire transfer coming
5 out of the Eufora account on March 20, 2009?

6 A. No.

7 Q. And showing you what's in evidence as Government's
8 2303, page 2 -- sorry. Wrong exhibit. Let me do it this
9 way.

10 If there were a number of accounts that I went
11 through here showing money going from you to Eufora, did
12 you authorize any of that money to go to Mr. Gaarn and/or
13 others?

14 A. No.

15 Q. Did anybody at the time, and I'm specifically talking
16 about late 2008, first half of 2009, did anybody -- did
17 you ever authorize anybody to do that with your money with
18 respect to your investments in Eufora?

19 MR. HALEY: Objection.

20 THE COURT: Overruled. You can answer it.

21 A. Can you repeat the question. Sorry.

22 Q. Did you ever authorize -- withdrawn.

23 Did anybody ever tell you about any money that
24 you invested in Eufora going to Mr. Gaarn and/or others?

25 A. No.

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1 Q. Did Mr. Kenner tell you about those transactions at
2 the time?

3 MR. HALEY: I assume anybody, Judge -- I object.
4 Judge, I withdraw the objection. Let's move on. I
5 withdraw the objection.

6 THE COURT: You can answer.

7 A. No.

8 Q. What about Mr. Constantine?

9 A. No.

10 Q. Finally, are you familiar with something called the
11 Global Settlement Fund?

12 A. Yes.

13 Q. What do you know about the Global Settlement Fund?

14 A. It was a fund that was set up through a group of
15 players to try and get our money back in different
16 projects that we were invested in.

17 Q. And specifically which projects, do you recall?

18 A. All of them. I don't know specifically which
19 projects. I think Mexico.

20 (Continued on next page.)

21

22

23

24

25

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1 BY MR. MISKIEWICZ (Cont'd):

2 Q. Do you know who was the developer in Mexico?

3 A. To my recollection, Ken Jowdy.

4 Q. And what was -- did you contribute to something
5 called the GSF, Global Settlement Fund?

6 A. Yes.

7 Q. Do you remember how much?

8 A. Unfortunately, yes.

9 Q. How much?

10 A. \$250,000.

11 Q. I'm showing you what's been received in evidence as
12 Government Exhibit 1504.

13 This is a wire transfer instructions dated May
14 19, 2009.

15 Correct?

16 A. Correct.

17 Q. And it says here, Phil Kenner is attorney in fact for
18 Glenn Murray.

19 At or about this time did you provide
20 essentially what's called a power of attorney to
21 Mr. Kenner?

22 A. It sounds -- yes.

23 Q. Is it true that your financial advisor, Mr. Kenner,
24 could engage certain transactions in your name?

25 A. Yes.

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1 Q. And you knew that was -- you knew that was happening,
2 correct?

3 A. Yes.

4 Q. You permitted him to do that, right?

5 A. Yes.

6 Q. Can you see who the beneficiary account name is for
7 this \$250,000 wire transfer?

8 A. The law offices of Ronald Richards and Associates.

9 Q. Now, you said you understood that the money was to
10 help get your investments back, and you said everything.

11 You mentioned Mexico. Was there anything else?

12 A. I mean, not that I could remember, but lawyer fees, I
13 would assume that was part of it.

14 Q. What do you mean lawyer fees?

15 You were paying lawyer fees or you were getting
16 lawyer --

17 A. Well, everything.

18 It was however we were going to get our money
19 back in these different investments.

20 Q. Beyond Mexico and Ken Jowdy, do you have any
21 recollection of anywhere else that the money was going to
22 be spent?

23 A. No.

24 Q. Do you recall either Mr. Kenner or Mr. Constantine
25 advising you that the money might be spent in other things

3504

1 in addition to lawyer fees?

2 MR. HALEY: Your Honor -- withdrawn.

3 A. Other things, no, just to somehow be able to get our
4 money back for the other investments.

5 Q. Let me show you what I'm marking for identification
6 as GM, for Glenn Murray-1.

7 MR. MISKIEWICZ: The government moves for the
8 admission of GM-1.

9 MR. HALEY: I'm pretty sure I know what it is,
10 Judge.

11 MR. MISKIEWICZ: Oh, sorry.

12 MR. HALEY: That's okay.

13 (There was a pause in the proceedings.)

14 MR. HALEY: No objection, your Honor.

15 THE COURT: Mr. LaRusso, you said no objection?

16 MR. LARUSSO: I did, Judge.

17 THE COURT: GM-1 is admitted.

18 (Whereupon, Government Exhibit GM-1 was received
19 in evidence, as of this date.)

20 BY MR. MISKIEWICZ:

21 Q. Showing you what's now in evidence as GM-1.

22 (The above-mentioned exhibit was published to
23 the jury.)

24 BY MR. MISKIEWICZ:

25 Q. The way e-mails work, let's focus on the bottom, just

3505

1 very briefly, who -- can you see who this is from?

2 A. Yeah, Phil Kenner.

3 Q. And it's being sent to you, correct?

4 A. Correct.

5 Q. And Gmuzz that's --

6 A. That's my e-mail, yes.

7 Q. It's also an nickname you went by?

8 A. Yes, it's my nickname, yes.

9 Q. And this e-mail is to you, correct?

10 A. Correct.

11 Q. Without getting into any of the details it does make
12 reference to your \$250,000, correct?

13 A. Correct.

14 Q. Which was sent per Government Exhibit 1504 of May
15 19th.

16 A. Correct.

17 Q. This says May 18th, but it's indicating that \$250,000
18 is going to the Ron Richards' trust account for your
19 proportionate contribution to the Global Settlement Fund.

20 It then goes on to say that in addition to
21 paying various legal fees, this would also get you
22 membership agreements from Tommy.

23 Who's Tommy?

24 A. That would be Tommy Constantine.

25 Q. Is that who you cc'd there?

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1 A. Yes.

2 Q. Membership agreements from Tommy for your acquisition
3 of additional interest in Eufora, as well as your new LLC
4 and operating agreements reflecting your ownership
5 interest in the Avalon Airpark real estate project, the
6 Falcon 10 aircraft and two Palms Place condominium units.

7 Does this refresh your recollection that
8 \$250,000 -- your \$250,000 in the Global Settlement Fund
9 was supposed to also go to these other things?

10 A. Yeah, I mean, that's the e-mail.

11 That's my name. That's sent to me, yes. So I
12 must have read it.

13 Q. My question about this is, have you ever received any
14 documentation showing any increased ownership interest in
15 Eufora?

16 A. No.

17 Q. As you sit here today, have you received any return
18 from this company known as Eufora?

19 A. No.

20 Q. Do you know where your money is?

21 A. Gone, probably.

22 MR. HALEY: Well --

23 BY MR. MISKIEWICZ:

24 Q. What about this Falcon 10 aircraft?

25 At or about this time, when you got this e-mail,

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1 did anybody -- this is from Mr. Kenner -- did Mr. Kenner
2 tell you that he previously had a loan on a Falcon 10
3 aircraft?

4 A. I don't recall, no.

5 I wasn't involved in any of that stuff there.

6 Q. And did Mr. Kenner and/or Mr. Constantine tell you
7 that the Falcon 10 aircraft loan went into default and
8 they bought the aircraft?

9 A. I don't recall him telling me, no.

10 Q. Do you know where the aircraft is today?

11 A. No idea.

12 Q. Did you ever get a fractional share, to your
13 knowledge, of this aircraft?

14 A. No.

15 Q. Did you ever see the aircraft?

16 A. No.

17 Q. Do you know a Sue Ellen Ferguson?

18 A. No.

19 Q. If there is documentation suggesting she eventually
20 bought the aircraft with Mr. Constantine, were you ever
21 shown that?

22 A. No.

23 Q. At or about the time or any time after this e-mail?

24 A. No.

25 Q. The Palms condominium units, do you know what's being

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1 referred to there, which condominium units?

2 A. I don't know which ones, no.

3 Q. Did you have any discussion with either
4 Mr. Constantine or Mr. Kenner at about this time about you
5 getting an ownership interest in condo units in the Palms
6 Hotel in Las Vegas?

7 A. Through the Global Settlement Fund?

8 No.

9 Q. Were you told you were going to get a piece of condos
10 in the Palms through any other matter?

11 A. No.

12 Q. Do you know who owns the condos today?

13 A. No.

14 Q. The Avalon Airpark real estate project, did you get
15 any documentation showing -- or reflecting your ownership
16 interest in the Avalon Airpark real estate project?

17 Did you ever get anything?

18 A. I don't recall, no.

19 Q. Did Mr. Constantine tell you that the Avalon Airpark
20 was foreclosed upon?

21 A. No.

22 Q. Do you know who owns it today?

23 A. No.

24 MR. MISKIEWICZ: One moment, your Honor, please.

25 THE COURT: Yes.

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1 (There was a pause in the proceedings.)

2 MR. MISKIEWICZ: Thank you, very much,
3 Mr. Murray

4 I have no further questions.

5 THE COURT: Cross-examination.

6 MR. HAILEY: Yes, sir.

7 May I see the government Government Exhibits,
8 not the charts, but the exhibits that were just utilized,
9 specifically GM-1.

10 | CROSS-EXAMINATION

11 | BY MR. HALEY:

12 Q. Mr. Murray, good afternoon, sir.

13 A. Hello.

14 Q. My name is Rick Haley and I represent Phil Kenner.

15 You and I haven't met before today, correct,
16 sir?

17 | A Correct

18 Q. You said a while ago, sir, that with reference to
19 GM-1, when shown this document, you looked at it, you saw
20 it was your Gmail address and I believe you testified
21 that's my Gmail address, so I must have read this
22 document.

23 | Correct?

24 A. Correct.

25 Q. Was it your habit, sir, over the years when you

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1 received, let's say, documents from Phil Kenner or some
2 other party as relates to, let's say, new investments that
3 were specifically addressed to you, you would typically
4 read those documents?

5 A. Yes.

6 Q. Because it was, I mean, important to you. It's
7 addressed to you.

8 It involves your investment either from your
9 financial advisor or let's say a bank and there would be
10 no reason not to read it if you had the opportunity and
11 time, you would read it.

12 Correct?

13 A. Correct.

14 Q. Over the years when Phil was your financial advisor,
15 was there ever an incident where you would ask Phil a
16 question about your investments, the status of your
17 investments and Phil would say in substance, well, I'm not
18 going to answer your question?

19 Did that ever happen?

20 A. No.

21 Q. Isn't it true, sir, that over the years when Phil was
22 your investment advisor, if you wanted the time to speak
23 with him about investments, Phil would give you that time,
24 wouldn't he?

25 A. Correct.

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1 Q. Over the years when Phil was your investment advisor,
2 isn't it true, sir, if there was something that you wanted
3 him to explain to you with reference to your investment,
4 he would give you that explanation, isn't that true?

5 A. Correct.

6 Q. Now, I have no doubt, sir, that today, under oath,
7 you are testifying to the best of your recollection.

8 Isn't that true?

9 A. Correct.

10 Q. But the conversations that you had with Phil with
11 reference to the Hawaii investment and the project, as
12 well as Eufora, they go back several years now, do they
13 not?

14 A. Yes.

15 Q. Let's speak about your memory in connection with the
16 Hawaii investment.

17 You do have a memory of Phil recommending the
18 Hawaii investment to you because he was encouraged that
19 this property in Hawaii would be a productive investment.

20 You have a memory of that, is that correct?

21 A. Yes.

22 Q. Do you recall where that conversation with Phil took
23 place?

24 Your home, his home?

25 A. No.

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1 Q. Do you have a recollection as to whether anyone else
2 was present during that conversation?

3 A. No.

4 Q. Do you have a recollection as to how long that
5 conversation took place?

6 A. How long?

7 Q. Yes, sir.

8 A. No.

9 Q. Well, whenever you met with Phil in connection with
10 your financial investments, when Phil left that meeting,
11 did you have a sense that Phil had not fully explained the
12 investment to you in terms of answering any questions or
13 giving you an understanding as to what it was about?

14 Would Phil at least try to do that, to the best
15 of your memory?

16 A. Yes.

17 Q. We know, sir, that by your direct testimony you
18 invested \$100,000 in Hawaii, the project, correct?

19 A. Correct.

20 Q. And then we know, sir, that you ultimately signed a
21 document authorizing your line of credit to be accessed by
22 Phil for purposes of the Hawaii project.

23 Isn't that correct?

24 A. Yes.

25 Q. Sir, do you have a recollection or not that during

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1 the course of the conversation you had with Phil in
2 connection with your Hawaii investment it was explained to
3 you that by virtue of your investment monetarily, you
4 would be obtaining a percentage interest in the project?

5 You would actually become an equity owner, part
6 of the project, do you remember something like that being
7 discussed?

8 A. Sounds familiar, yes.

9 Q. And did you have a sense and an understanding that
10 the greater your monetary commitment, to let's say the
11 Hawaiian project, vis-à-vis let's say the monetary
12 commitment of others, you would get a greater ownership
13 interest, a greater equity interest?

14 Do you have a sense of having that
15 understanding?

16 A. Yes.

17 Q. Are you able, sir, today, as you recollect that
18 conversation with Phil regarding the Hawaii investment,
19 that he did or did not discuss with you the manner in
20 which the lines of credit were going to be drawn upon and
21 used?

22 Do you know -- are you here to say that,
23 absolutely, it was not discussed? It may have been
24 discussed, I just don't have any recollection?

25 A. How the line of credit was going to be used?

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1 Q. Yes, sir.

2 The question is this:

3 Do you have a recollection today, as you sit
4 here, that the lines of credit in connection with the
5 commitment of the line of credit to the Hawaii project,
6 that there was no discussion between you and Phil as
7 regards to the use of that line of credit?

8 What's your testimony on that? What's your best
9 recollection today?

10 A. No, I didn't know the exact use of that line of
11 credit.

12 Q. That's your best recollection today, correct?

13 A. Yes, as of today, yes.

14 Q. There did come a point in time, did there not --
15 well, were you familiar, sir, do you have a recollection
16 of an event in which Lehman Brothers, the lenders, became
17 involved in the Hawaii project and by virtue of some money
18 loaned by Lehman Brothers, you returned -- you received a
19 return on some part of your investments in the Hawaii
20 project?

21 Do you have a memory of that?

22 A. No, I don't.

23 Q. Well, if I were to suggest to you as relates to the
24 \$100,000 that you invested, you did get a return of -- you
25 did receive a return of \$5,000 -- you did receive a return

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1 in 2006 of \$42,553 with reference to that \$100,000 you
2 had.

3 A. I might have.

4 Now it's sounding -- yes, I might have. I can't
5 remember, but I might have, yeah.

6 Q. Mr. Murray, that's fine.

7 Listen, this is a long time ago. This is not a
8 quiz or a test. I'm just asking for your best
9 recollection.

10 A. Okay.

11 Q. And, sir, do you also have a recollection that an
12 additional \$385,481.75 was also paid out to you in August
13 of 2006 with reference to replenishment of a portion of
14 your line of credit?

15 Do you remember getting that check?

16 A. Do I remember getting a check for \$300,000?

17 Q. Yes, sir, actually to be specific, \$385,481.75?

18 A. That sounds familiar, yes.

19 Q. Okay.

20 Incidentally, did you over the years, if you
21 recall, receive documentation, paperwork from Phil that
22 had some relevance and association with your Hawaiian
23 investment by getting some packages of material, things of
24 that nature?

25 A. Yes, I did eventually get some packages, yes.

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1 Did I read them? No.

2 Q. I wasn't going to ask you this question.

3 A. I thought that was going to be your next question.

4 Q. All right.

5 But you did receive them, correct?

6 A. Correct.

7 Q. And I take it, sir, you had the opportunity to read
8 them, should you so choose, correct?

9 A. Correct.

10 Q. As a matter of fact, is one of the reasons, or
11 perhaps the reason you didn't read those documents is
12 because they may have been perhaps, let's say, 7, 8, 9
13 inches, maybe 10 inches in depth or greater?

14 A. Correct.

15 Q. You do remember, sir, based on your direct testimony,
16 signing the Standard Advisors agreement, you remember Phil
17 was at some point in his own business known as Standard
18 Advisors?

19 A. Correct.

20 Q. Do you remember, and again, Mr. Murray, I know this
21 goes back a long time, but do you remember, sir, signing a
22 document involving the Standard Advisors agreement whereby
23 Phil and you had notched something in writing concerning
24 your contractual arrangement with Phil as relates to the
25 services he was going to provide to you as your business

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1 manager/financial advisor?

2 A. Correct.

3 Q. Do you know where that agreement is today?

4 Did you retain it or not?

5 A. No idea, no.

6 Q. Okay.

7 You testified, sir, that you did get statements
8 from Northern Trust, but not often, but I did receive
9 statements on occasion from Northern Trust.

10 Is that true?

11 A. Correct.

12 Q. And as relates to the default letter, sir, admitted
13 in evidence as Government Exhibit 2125 and this document
14 here, sir, I want you to see this document, but I'll put
15 it up on the screen for all to see, I think you were asked
16 a question on direct by the government as to whether or
17 not you received this notice of default, the default
18 letter.

19 Correct?

20 A. Correct.

21 Q. And was your testimony no or I don't recall?

22 Do you remember what you said?

23 A. If I saw that?

24 Q. Yes.

25 A. Well, I don't remember what my answer was, but it was

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1 sent to me.

2 So I might have took a peek at it.

3 Q. Well, you might have took a peek at it, which is
4 fine, but we are talking about a two-page document,
5 correct?

6 It wouldn't take a lot of peeking to read this,
7 correct?

8 A. Correct.

9 Q. And it is entitled in big bold letters notice of
10 default intent to sell collateral, you can agree with
11 that.

12 Correct?

13 A. Correct.

14 Q. Whatever your answer, whether you said no, I did not
15 receive it, or I don't recall, we can agree, sir, that as
16 relates to this particular document --

17 MR. HALEY: Withdrawn.

18 BY MR. HALEY:

19 Q. Did you live at 3120 10th Street, Manhattan Beach,
20 California, 90266 in or about March of 2009?

21 A. You said 3120, it's 1320, but, yes.

22 Q. 1320, you are correct. Thank you.

23 Well, as relates to this document we can agree,
24 sir, that Northern Trust, for whatever reason, maybe given
25 the content of the letter, sent it via Federal Express and

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1 certified mail, return receipt requested dash, dash,
2 personal and confidential. That's what it says on the
3 document.

4 Correct?

5 A. Correct.

6 Q. And over the years, sir, if you would receive let's
7 say a document return receipt requested, I take it you
8 would presumably sign the return receipt.

9 True?

10 A. Correct.

11 Q. Do you have any memory sometime after March of 2009
12 reaching out to Phil to talk about the status of your line
13 of credit and your collateral, or not?

14 A. I'm sure I think we talked about it.

15 Yes.

16 Q. When you would talk about those matters, much like
17 you testified before, Phil would at least answer whatever
18 question you had, true?

19 A. Correct.

20 Q. The account statement for Northern Trust, we can
21 agree, sir, that the address is listed on this document is
22 your address, correct?

23 A. Correct.

24 Q. And should you have chosen to take a peek at it, is
25 it fair to state, sir, that at least as relates to the

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1 content of the document, itself, it's capable of being
2 read.

3 Correct?

4 A. Correct.

5 Q. And let's say in or about March of 2009, if you
6 decided to take a peek at a document like this and read it
7 and had any questions as to what it meant, you had access
8 to Phil Kenner by way of contacting him to discuss it.

9 Is that true?

10 A. Correct.

11 THE COURT: Why don't we take the afternoon
12 break.

13 Don't discuss the case.

14 (Jury leaves the courtroom.)

15 (Recess.)

16 (Continued on next page.)

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1 (Following a recess.)

2 THE COURT: Okay.

3 We'll get the jury and if you would get

4 Mr. Murray.

5 (There was a pause in the proceedings.)

6 THE CLERK: All rise.

7 (Jury enters the courtroom.)

8 THE COURT: Everyone can be seated.

9 Go ahead, Mr. Haley.

10 MR. HALEY: Thank you, your Honor.

11 BY MR. HALEY:

12 Q. I'm going to have you take a look at a document
13 that's also an account statement which if you compare it
14 to Government Exhibit 2176, I want you to be able to
15 understand the content.

16 Does this appear to be, sir, an account
17 statement with reference to your account that was the
18 following month's account statement with reference to your
19 account?

20 Is that true?

21 A. Correct.

22 Q. As a matter of fact, we have the same address and
23 your name, is that true?

24 A. Correct.

25 Q. And, of course, the same account number?

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1 A. Yes.

2 Q. Okay.

3 MR. HALEY: Your Honor, I would offer that as
4 Kenner Exhibit 100.

5 I don't believe there is an objection.

6 MR. MISKIEWICZ: No objection.

7 MR. LARUSSO: No objection, your Honor.

8 THE COURT: Kenner Exhibit 100 is admitted.

9 (Whereupon, Defense Exhibit Kenner 100 was
10 received in evidence as of this date.)

11 MR. HALEY: Thank you.

12 May I have one quick moment, Judge?

13 THE COURT: Yes.

14 BY MR. HALEY:

15 Q. Mr. Murray, I'm going to have you take a look at
16 Kenner Exhibit 101, if we can compare Government Exhibit
17 2176 now to Kenner Exhibit 100, Kenner Exhibit 101, in
18 evidence 2176 reflects the account statement for March 1,
19 2009 to March 31, 2009.

20 Can we agree?

21 A. Yes.

22 Q. And Kenner Exhibit 100 reflects the account statement
23 for April 1, 2009 through May -- excuse me -- April 1,
24 2009, through April 30, 2009.

25 Is that correct?

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1 A. Correct.

2 Q. And the document I'm showing you now reflects the
3 statement for that account, same account numbers, your
4 address, for May 1, 2009 through May 8, 2009.

5 Is that correct?

6 A. Yes.

7 Q. Okay.

8 MR. HALEY: Your Honor, I offer that as Kenner
9 Exhibit 101.

10 MR. MISKIEWICZ: No objection.

11 MR. LARUSSO: No objection.

12 THE COURT: 101 is admitted.

13 (Whereupon, Defense Exhibit 101 was
14 received in evidence as of this date.)

15 BY MR. HALEY:

16 Q. Sir, do you know if in or about 2009 you were having
17 any difficulty receiving mail through the United States
18 Postal Service, though a government agency, were you
19 having any difficulty receiving mail --

20 A. No.

21 Q. -- through the United States Postal Service?

22 A. No.

23 Q. With reference to the questions asked of you by the
24 government concerning your memory of the conversations you
25 had with Phil Kenner, with respect to your decision to

Murray - Cross/Haley

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1 invest in Eufora, when to the best of your memory did that
2 first conversation take place?

3 A. I don't remember.

4 Q. Would it have been in 2008, based upon what you have
5 seen in evidence?

6 A. Yes, I guess so.

7 Q. Do you know where that conversation occurred?

8 A. Manhattan Beach.

9 Q. I'm sorry?

10 A. Manhattan Beach.

11 Q. Is that your home?

12 A. That's the hometown I live in, yes, Manhattan Beach,
13 California.

14 Q. So as best you recall, it occurred, let's say, in the
15 comfort -- well, did it occur in your home, a
16 restaurant --

17 A. Restaurant.

18 Q. I see.

19 Was it just you and Phil that had that
20 conversation, do you recall?

21 Or was anyone else present?

22 A. Tommy Constantine.

23 Q. I'm talking, sir, about the first time, the first
24 time Phil mentioned to you Eufora, was Tommy Constantine
25 present during that conversation?

Murray - Cross/Haley

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1 A. What I recall, yes.

2 Q. Okay.

3 When you testified on direct pursuant to a
4 specific question from Mr. Miskiewicz, were you told your
5 money would be used for Eufora, you answered yes.

6 Correct?

7 A. Correct.

8 Q. Now, this conversation that you are having --

9 MR. HALEY: Withdrawn.

10 BY MR. HALEY:

11 Q. Do you know when in 2008, what season it was?

12 A. No, I can't remember.

13 Q. Do you have a recollection as to approximately the
14 duration in time during the course of this conversation?

15 A. How long did it take?

16 Q. Yes, sir.

17 A. Couple hours, maybe.

18 It was dinner, I think.

19 Q. And do you have a sense during the couple-of-hour
20 conversation with Phil Kenner and Tommy Constantine, as
21 you sit here today, that they wouldn't answer any question
22 you might have about your investment, that they would
23 withhold information?

24 Did you have a sense that they were somehow not
25 answering any question?

Murray - Cross/Haley

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1 A. No.

2 Q. Now, and I don't mean to be facetious, sir, you
3 didn't take notes at that meeting, I take it, did you?

4 A. No.

5 Q. And, again, I don't mean to be facetious, it wasn't
6 recorded with a stenographer present in terms of what was
7 said or who said what?

8 A. No.

9 Q. But you do have a memory that it was being
10 recommended to you as a solid investment, but one that
11 brought forth risk, is that true?

12 A. Of course, yes.

13 Q. I think you said on direct, you know, what isn't
14 risky?

15 You are a hockey player, so you know risk.

16 A. Correct.

17 Q. Did you have an understanding, sir, to the best of
18 your recollection, that you were acquiring an interest in
19 a privately held company as opposed to one that's listed
20 on the public stock exchange like Microsoft or something
21 like that?

22 Did you have an understanding of that?

23 A. I understood it was not one offered.

24 Q. It was not?

25 A. Correct.

Murray - Cross/Haley

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1 Q. And did you have an understanding, sir, that --

2 MR. HALEY: Withdrawn.

3 BY MR. HALEY:

4 Q. Do you know why Tommy Constantine was present at that
5 meeting?

6 A. He was the one starting up Eufora.

7 Q. Well, when you say starting up Eufora, sir, again you
8 weren't taking notes.

9 Did he say, I'm starting up Eufora, or is it
10 possible he said, I'm an owner in Eufora?

11 A. Yeah, it's possible he said that, yeah, he was the
12 owner of Eufora, correct.

13 Q. It's unfair of me, sir, to ask you questions to try
14 to reconstruct the memory of this conversation, and that's
15 not my intent.

16 But with reference to what was said to you and
17 your memory of what was said to you, do you recall whether
18 or not there was some discussion one way or another about
19 the fact that what you were acquiring was a percentage in
20 that privately held company, which percentage was part and
21 parcel of Tommy Constantine's ownership interest?

22 In other words, he was giving up some of his
23 interest in the company so that you could acquire an
24 interest by way of what he was essentially relinquishing,
25 if you remember?

Murray - Cross/Haley

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1 A. I don't remember which percentage, no.

2 Q. But you had an idea you were getting a percentage,
3 correct?

4 A. Yes.

5 Q. And do you know one way or another, sir, as you sit
6 here today, the means by which you were acquiring that
7 percentage?

8 Was it being issued by the board of directors?

9 Was Tommy Constantine relinquishing part of his ownership
10 interest?

11 Do you have any memory one way or the other in
12 that respect?

13 A. No.

14 (Continued on next page.)

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Murray - Cross/Mr. Haley

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1 CROSS-EXAMINATION

2 BY MR. HALEY:

3 Q. You were asked questions by the government if, as you
4 sit here today, you have received any return on your
5 investment in Eufora.

6 Do you recall those questions?

7 A. Yes.

8 Q. Do you know one way or another as you sit here today
9 whether or not your interest in Eufora was or is reflected
10 on the books and records?

11 A. Pardon me.

12 Q. Do you have any knowledge one way or another as to
13 whether or not -- withdrawn.

14 Do you have any knowledge as you sit here today,
15 sir, that your investment in Eufora is wholly and totally
16 valueless?

17 Do you have any understanding that it has no
18 value?

19 A. I would assume it has no value.

20 Q. And that's an assumption on your part.

21 A. Yes, it is an assumption.

22 Q. Did someone tell you that it has no value?

23 A. No.

24 Q. Okay. And that assumption is based upon -- it is not
25 argumentative, judge -- the assumption is based upon the

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1 fact that as of today you have not yet received, let's
2 say, specific documentation by way of, let's say, a
3 certificate of membership interest or seen the books and
4 records.

5 Is that correct?

6 A. Correct.

7 Q. Now let's go to the point in time where you had other
8 conversations with Phil Kenner after your initial
9 investment where Tommy Constantine was present and Phil
10 recommended further investments in Eufora.

11 Do you remember you then contributed, the
12 government showed you documents where you authorized Phil
13 to transfer monies from your account to Eufora?

14 A. Correct.

15 Q. And the government asked you if the name Timothy
16 Gaarn was familiar to you, and I believe you said
17 something like he worked there. And then there was some
18 testimony about when you learned he worked there.

19 Do you recall some questions about that?

20 A. I did. Yes. I didn't know him at the time but I've
21 come to know the name.

22 Q. Well, let's talk about that conversation where you're
23 meeting Phil who is now recommending further investment in
24 Eufora.

25 Tommy Constantine wasn't present during that

Murray - Cross/Mr. Haley

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1 conversation, I take it?

2 A. No.

3 Q. Where did that conversation take place?

4 A. I don't remember.

5 Q. Do you recall or have some sense, sir -- again, we
6 are only asking for your best recollection, Mr. Murray --
7 as to how long that conversation took place.

8 A. The one with Phil?

9 Q. Yes.

10 A. No, I don't recall. I don't remember how long it
11 was. No.

12 Q. But you did talk about it. Correct?

13 A. Correct.

14 Q. And I always say this sir, and I don't mean to be
15 facetious, but I take it during that conversation you
16 weren't taking notes.

17 A. True.

18 Q. There wasn't a tape recorder that was memorializing
19 what was said between you and Phil. Is that true?

20 A. Correct.

21 Q. And indeed there was nobody like this stenographer
22 present. Is that true?

23 A. True.

24 Q. So is it fair to state, sir, that because of the time
25 that elapsed, you are not able to state today under oath

Murray - Cross/Mr. Haley

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1 with any degree of specificity, you started talking about
2 Eufora, and from the moment you started talking about
3 Eufora to the end of our conversation, this is precisely
4 what was told to me by Phil Kenner.

5 You can't stay that, can you?

6 A. Correct.

7 Q. Did there ever come a point in time, sir, following
8 the conversation you had with Phil concerning the Eufora
9 investments, both the investment where Tommy Constantine
10 was present and the additional investments where you are
11 speaking with Phil alone, that you reached out to Phil and
12 said: *Phil, I'd like to discuss with you again my Eufora*
13 *investments, where they stand, how I acquired my interest;*
14 things of that nature?

15 Does that happen after those conversations?

16 A. Not that I recall, no.

17 Q. Did you maintain contact with Phil Kenner following
18 these conversations that occurred with reference to your
19 Eufora investments? I mean, did you continue to stay in
20 contact with Phil?

21 A. Yes.

22 Q. Did you ever ask him before today about the status of
23 your Eufora investments?

24 A. No.

25 Q. And anticipating redirect, sir: I assume you didn't

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1 ask him because Phil Kenner is your trusted financial
2 advisor. Is that true?

3 A. Correct.

4 Q. You were asked again questions, sir, about whether
5 you have ever received a return on your investment in
6 Hawaii, whether you have ever received by way of monetary
7 compensation, return on investment in Eufora, and you
8 answered definitively as of today no. Correct?

9 A. Correct.

10 Q. Does the name Ken Jowdy mean anything to you, sir?

11 A. Yes.

12 Q. And as a result of a dispute involving yourself and
13 Ken Jowdy, it is true, is it not, that you prevailed in a
14 one million dollar judgment against Ken Jowdy as a result
15 of that dispute. Is that correct?

16 A. Correct.

17 Q. Today, as you sit on this witness stand, how much of
18 that one million dollar judgment against Ken Jowdy have
19 you received?

20 A. Zero.

21 Q. Not a penny?

22 A. No.

23 Q. Did you have a lawyer in connection with that
24 lawsuit, sir?

25 A. Yes.

Murray - Cross/Mr. Haley

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1 Q. When did you obtain that judgment? Approximately.

2 A. Four years maybe now. Three, four years.

3 Q. Not telling us what was said between you and your
4 attorney, do you have any idea, sir, as to the interest
5 that would be running on a one million dollar judgment
6 that was obtained, how long years ago?

7 A. Four.

8 Q. Do you have any idea of the interest that is running
9 on that?

10 A. Do I know a number?

11 Q. Yes, sir.

12 A. 10 percent.

13 Q. If I were suggest to you, maybe as high as 12
14 percent.

15 Well, where did you obtain that judgment, sir?

16 In what state?

17 A. Nevada.

18 Q. We can all do the math as to what that is worth today
19 at 10 percent on a million dollar judgment going back four
20 years.

21 Now, Phil Kenner also assisted, did he not, in
22 efforts by an attorney by the name of Michael Stolper to
23 commence an investigation, indeed lawsuit, with reference
24 to Eufora? Let me back up.

25 Does the name Michael Stolper mean anything to

Murray - Cross/Mr. Haley

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1 you?

2 A. No. I don't recall that name.

3 Q. Okay. This goes back some time, too. Correct?

4 A. Correct.

5 Q. Well, do you recall an instance, sir, where Phil
6 Kenner assisted you in bringing a document called a
7 pleading in bankruptcy court to preserve your interest
8 with reference to a bankruptcy proceeding filed by Tommy
9 Constantine?

10 Do you remember that?

11 A. No, I don't remember that.

12 Q. Mr. Murray, would you kindly take a look at Kenner
13 Exhibit 102. It is 13 pages in length, sir. But I'm
14 going to ask you if your signature appears on that
15 document.

16 A. Yes.

17 MR. LaRUSSO: Your Honor, this is twice. May I
18 have a side bar, please?

19 THE COURT: Yes.

20 (Continued on the following page.)

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Murray - Cross/Mr. Haley

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1 (Discussion at sidebar ensued as follows.)

2 MR. LaRUSSO: I'm looking at the caption of this
3 proceeding. This is the bankruptcy proceeding.

4 THE COURT: I assume this is just a very general
5 question. We had other witness that he asked about this
6 filing. You are not asking any of the details of the
7 document, right?

8 MR. HALEY: Your Honor, I'm sensitive obviously
9 to those issues.

10 Under other circumstances my inclination would
11 be to offer it into evidence, but let me just collect my
12 thoughts for a moment, judge, only because he has
13 acknowledged this is a document he signed.

14 THE COURT: I am not saying you can't
15 authenticate it, but not what allegations were made in a
16 civil lawsuit, unless it is inconsistent with something he
17 says here today.

18 MR. HALEY: It is not the offer of proof, judge,
19 not in terms of being relevant and material in connection
20 with the allegations made. It is from my perspective
21 relevant and material insofar as my client is charged with
22 conspiratorial conduct with Tommy Constantine,
23 specifically with reference to Eufora.

24 What occurs is Tommy Constantine then files a
25 petition, bankruptcy petition, wherein he claims falsely

Murray - Cross/Mr. Haley

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1 that he never had an interest in Eufora. In an effort to
2 protect his interest --

3 THE COURT: I understand.

4 MR. HALEY: Judge, I'm just going to ask him --

5 THE COURT: I think it is fine to say that he
6 made an effort in connection with Tommy Constantine's
7 bankruptcy to preserve his interest in Eufora.

8 MR. HALEY: Very well. I will do that.

9 MR. LaRUSSO: Fine. Thank you.

10 (Discussion at sidebar was concluded.)

11 (Continued on the following page.)

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Murray - Cross/Mr. Haley

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1 | (The following ensued in open court.)

2 | BY MR. HALEY:

3 Q. Sir, with reference to this particular document,
4 Kenner 102, without reading any portion of the document
5 into the record, could you simply read that first sentence
6 to yourself. Okay?

7 And I believe you did testify that that is your
8 signature on the last part of that document. Is that
9 true?

10 | A. That's correct.

11 Q. I'm simply going to ask you to take a look at what is
12 here as relates to this part of the document. So my
13 question to you, sir, is, does this refresh your
14 recollection as to whether or not Phil Kenner at some
15 point in time assisted you in filing actually this
16 specific document in connection with a bankruptcy
17 proceeding commenced by Tommy Constantine in order for you
18 to preserve your rights.

19 A. Correct.

20 Q. It refreshes your recollection?

21 A. Well, it is in the print, yes.

Q. It refreshes your recollection?

23 A. Yes.

24 Q. Sir, in addition to assisting you in that are
25 bankruptcy proceeding we referred to a moment ago, did

Murray - Cross/Mr. Haley

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1 Phil Kenner assist you with reference to that lawsuit you
2 brought against Ken Jowdy where ultimately you obtained
3 that one million dollar judgment?

4 A. Yes.

5 Q. There has been questions asked of various witnesses,
6 sir, in this case about an investment they made involving
7 a project known as Diamante Delamar in Mexico, wherein Ken
8 Jowdy was involved. And my question to you is this, sir.

9 Did there come a point in time that you invested
10 \$500,000 in a project known as Diamante Delamar?

11 A. Correct.

12 Q. That was a project involving Ken Jowdy as reference
13 to your understanding of him having some ownership
14 interest. Is that correct?

15 A. Correct.

16 Q. Today, as you sit here today, have you ever received
17 a penny back from that \$500,000 investment in Diamante
18 Delamar? Yes or no?

19 A. No.

20 Q. Do you have an understanding, sir, based upon your
21 memory of events by way of conversations you had with Phil
22 Kenner or others, that with respect to the Hawaii project
23 and the money invested in the Hawaii project, that Ken
24 Jowdy owes the investors in that Hawaii project, including
25 yourself as an investor, money on the loan made to him?

Murray - Cross/Mr. LaRusso

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1 If you recall.

2 A. Does Ken Jowdy owe me money?

3 Q. Do you have an understanding, sir -- that is not the
4 question because we know the answer is no.

5 My question is, sir, do you have an
6 understanding, based upon conversations you have had with
7 individuals, that as relates the Hawaii investment, the
8 Hawaii project, Ken Jowdy also, by virtue of a loan made
9 to him for monies from the Hawaii project, has not paid
10 that back?

11 A. Correct. No, he hasn't.

12 MR. HALEY: Mr. Murray, it has been my pleasure,
13 sir.

14 Thank you.

15 THE WITNESS: Thank you.

16 THE COURT: Mr. LaRusso?

17 MR. LaRUSSO: Thank you, your Honor.

18

19 CROSS-EXAMINATION

20 BY MR. LaRUSSO:

21 Q. I know it's late in the afternoon, Mr. Murray.

22 How are you? My name is Rob LaRusso. I
23 represent Mr. Constantine.

24 You have told us on a number of occasions that
25 you met Mr. Constantine on one occasion. Am I correct?

Murray - Cross/Mr. LaRusso

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1 A. Yes.

2 Q. And I believe that you said the one occasion that you
3 recall was when he was with Mr. Kenner, and in that
4 meeting they discussed Eufora. Am I correct? Is that
5 your recollection?

6 A. Yes.

7 Q. I believe you also said that you don't recall when
8 that meeting actually took place, from your independent
9 recollection. Is that right?

10 A. Right.

11 Q. Would it be fair to say it would be many years ago?
12 Is that correct?

13 A. Yes.

14 Q. Okay. You do recall some specifics of the meeting?
15 That is, it was in California. Correct?

16 A. Correct.

17 Q. And it was at a restaurant called Hennesee's. Is
18 that also correct?

19 A. That's it. Yes. Correct.

20 Q. You are smiling that you remember.

21 A. That I remember. Yes.

22 Q. So that is the one and only meeting that you had with
23 Mr. Constantine. Is that right?

24 A. Right.

25 Q. And would it be fair to say that you really don't

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1 know what year that meeting actually took place? Is that
2 fair?

3 A. That's fair.

4 Q. In regards to that meeting, do you remember what the
5 last team you played for was?

6 A. During that meeting?

7 Q. No. No. What NHL hockey team. The last one.

8 A. Yes.

9 Q. Who was that?

10 A. Boston.

11 Q. You were residing in California at the time you were
12 playing for Boston?

13 A. After I finished playing. Yes.

14 Q. When you finished playing. That would have been the
15 '08-09 season. Is that right?

16 A. Correct.

17 Q. Now, we know from the government's exhibit that has
18 been received -- this is the exhibit the government
19 introduced as GM-1. And there were some questions asked
20 of you about this email. And you looked at it and said I
21 recognize the email address, and your answer was to an
22 extent I read it. Is that correct?

23 A. Correct.

24 Q. But to be fair to you, you don't remember as you are
25 testifying today the full extent of the information that

Murray - Cross/Mr. LaRusso

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1 is contained in that. You have no independent
2 recollection other than what is written here.

3 A. Correct.

4 Q. We know this was made in 2009. Correct?

5 A. Correct.

6 Q. We know that was a discussion about the global
7 settlement fund. Is that correct?

8 A. That's correct.

9 Q. Do you have, and you use this as a point of reference
10 some six year ago.

11 Do you remember speaking with Mr. Constantine
12 about the global settlement fund along with Mr. Kenner?

13 A. There was a conference call that I think he was on.

14 Q. Do you remember whether or not there was an in-person
15 meeting with Mr. Constantine wherein -- with you and Mr.
16 Kenner in regard to the global settlement fund? Around
17 this time.

18 A. Around this time, no, I don't. The only meeting I
19 remember, which I don't know the date, is the one at
20 Hennessee's which you just told me.

21 Q. My question is, did the meeting at Hennessee's occur
22 at or about the time you were asked to contribute to the
23 global settlement fund?

24 A. Maybe. I don't recall.

25 Q. So it is possible that it was around this period of

Murray - Cross/Mr. LaRusso

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1 time. Is that correct?

2 A. Correct.

3 Q. Would it be fair to say that the meetings you had
4 with Mr. Constantine more than likely did not occur eleven
5 years ago; it would be more like maybe five or six years
6 ago?

7 A. Correct, I guess.

8 Q. And I'm not trying to in any way trap you. Please
9 understand I'm just trying see, with my questionings and
10 with some of the documents, if we can narrow some of the
11 time frames that you met with Mr. Constantine.

12 So to sum up on this point, it would be fair to
13 say that you would not dispute the fact that your meeting
14 with Mr. Constantine and Mr. Kenner could have occurred at
15 or about the time of this email that you received
16 regarding the global settlement.

17 A. It could have, yes.

18 Q. Again, I'm not going to read the email, but your
19 understanding of the global settlement fund. You
20 mentioned on direct examination a number of purposes that
21 you were told. Do you remember what those were?

22 A. Yes. Lawyer fees and different things that trying to
23 get our investments back.

24 Q. When you say different things. I believe you
25 testified different projects. Is that also --

Murray - Cross/Mr. LaRusso

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1 A. Okay. Different projects.

2 Q. I don't want to put words in your mouth.

3 A. I don't know if I said that but okay.

4 Q. What were those different projects? Or different
5 things. It doesn't matter.

6 A. I don't know. I don't recall --

7 Q. Well, you do remember --

8 A. -- exactly.

9 Q. One of them was Mexico. I believe that is one of the
10 projects that you talked about. Okay?

11 A. Right.

12 Q. Do you recall any discussion about Ken Jowdy?

13 A. He was probably in the discussion, I'm sure.

14 Q. The global settlement fund was set up, or its most
15 significant purpose was to go after Ken Jowdy for the
16 money that you and other hockey players had invested in
17 projects down in Mexico.

18 Is that correct?

19 A. That's correct.

20 Q. And when we talk about Mr. Jowdy, is it your
21 recollection that you were contributing, along with the
22 other hockey players, for legal fees so that actions could
23 be taken against him to recover your investments?

24 Correct?

25 A. Correct.

Murray - Cross/Mr. LaRusso

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1 Q. Do you recall, now that you have had a chance to
2 looks at that email we talked about, that there were other
3 purposes discussed with you at the initial time of your
4 investment? Other than taking legal action against
5 Mr. Jowdy.

6 A. Well, in the email. You are referring to the email?

7 Q. Have you had a chance to review the email --

8 A. I looked at the email.

9 Q. You read it. And you don't have any objection to the
10 fact that that may have been part of your discussions with
11 Mr. Constantine and Mr. Kenner.

12 A. Correct.

13 Q. Would it be fair to say that if you ever had any
14 questions, knowing the relationship you had with
15 Mr. Kenner and Mr. Constantine, they would have answered
16 questions as comprehensively and fully as they could? Is
17 that correct?

18 A. Correct.

19 Q. So if you wanted answers to hangars and airplanes, if
20 that conversation came up and you asked them, they would
21 have answered it. Is that correct?

22 A. I would assumed so. Yes.

23 Q. Sticking with the global settlement fund, which takes
24 us around 2009. Did you continue any kind of
25 communication with Mr. Constantine in regards to the

Murray - Cross/Mr. LaRusso

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1 progress of the global settlement fund?

2 A. None that I recall. No.

3 Q. Do you recall the name of the lawyer, if one was
4 hired, that was going to represent your interest in
5 regards to the purposes of the global settlement fund?

6 A. Yes.

7 Q. What was his name?

8 A. Ron Richards.

9 Q. Do you remember any communications with Mr. Ron
10 Richards in regard to the progress of the global
11 settlement fund, to fulfill the purposes --

12 A. No.

13 Q. -- as you understood?

14 A. No.

15 Q. By your answer, can I ask you: No, you don't
16 remember? There may have been but as you testify here
17 today you don't remember any email communications or any
18 conversations?

19 A. I don't remember any email conversations. There
20 might have been but I don't believe.

21 Q. At this point you don't you recall them.

22 A. Yes.

23 Q. Do you have any recollection of being asked to
24 participate in conference calls that were set up by
25 Mr. Constantine so that you could be updated with regards

Murray - Cross/Mr. LaRusso

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1 to the progress of the global settlement fund?

2 A. I remember a couple. Yes.

3 Q. Would it work in this manner? That you would get
4 notification by email of a conference call, and then you
5 would email back saying whether you were available or
6 whether you were not available?

7 Is that correct?

8 A. That sounds about right. Yes.

9 Q. And in those conference calls that you did
10 participate in, did Mr. Constantine provide information
11 regarding the progress or the status of the global
12 settlement fund?

13 A. Did he provide?

14 Q. If you remember.

15 A. I don't remember but I'm sure I was on a few of the
16 calls, yes.

17 Q. And the purpose of the calls was the global
18 settlement fund, so as you think back to the period of
19 those conference calls you would say that it would be, the
20 subject would have been the global settlement fund?

21 A. Yes.

22 Q. I'm going to show you --

23 THE COURT: Mr. LaRusso, it is 4:30. I don't
24 know what you are about to do now.

25 MR. LaRUSSO: This is a good point to break,

Murray - Cross/Mr. LaRusso

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1 Judge.

2 THE COURT: We are going to recess now and will
3 reconvene tomorrow morning at 9:30. Don't discuss the
4 case. Have a good night.

5 (The following ensued in the absence of the jury
6 at 4:30 pm.)

7 THE COURT: Everyone can be seated.

8 After Mr. Murray finishes tomorrow. Who is
9 next?

10 MR. MISKIEWICZ: John Osborne. And Jackson
11 Stewart. Blake Rosser. If we can get to him, possibly
12 Chris Petrellese. And that would probably be the end of
13 the day.

14 THE COURT: And do you think you will fill up a
15 good part of Monday, too?

16 MR. MISKIEWICZ: Depending upon the hearing
17 tomorrow, Monday would be Ronald Richards and Joshua
18 Wayne.

19 THE COURT: Okay. Assuming only two witnesses
20 on Monday, that wouldn't take the whole day.

21 MR. MISKIEWICZ: No. We will be resting at that
22 point.

23 THE COURT: So we will recess until tomorrow.

24 But at this point, Mr. Haley, are you going to
25 go first or who is going first?

Murray - Cross/Mr. LaRusso

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1 MR. LaRUSSO: That is the way we had discussed
2 it.

3 MR. HALEY: Yes, sir. It is. And I have
4 advised Mr. Miskiewicz that my client will be testifying.

5 It is my preference, judge, that Vincent
6 Tesoriero testify first. The subpoena is returnable
7 Monday, but I'm not going to hold up this trial.

8 In other words if Mr. Tesoriero is not
9 available, I believe then we will proceed with my client's
10 testimony.

11 THE COURT: Are you still intending on calling
12 Mr. Jowdy?

13 MR. HALEY: We have to have discussions related
14 to that.

15 MR. LaRUSSO: The agreement reached by my
16 partner with his attorney was that we would get back to
17 him. We haven't made a final decision on Mr. Jowdy. It
18 is obviously based upon what information we have developed
19 on the government's case. So I don't know the answer
20 right now. Sorry.

21 THE COURT: When you were saying you have ten
22 witnesses and your case will take a week, was that with
23 Mr. Jowdy?

24 MR. LaRUSSO: No. Without. So I am leaning not
25 to call him.

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1 THE COURT: Okay. I think he could be on the
2 stand for a while.

3 MR. LaRUSSO: That is why I have not included
4 him in my list right now.

5 THE COURT: Okay. I'm not committing you, but
6 right now you anticipate you are going to call
7 Mr. Tesoriero.

8 MR. HALEY: Correct.

9 THE COURT: And Mr. Kenner.

10 MR. HALEY: Correct.

11 THE COURT: Any other witnesses other than Mr.
12 Jowdy potentially?

13 MR. HALEY: I am glad we are having this
14 discussion in this respect, Judge. And I think, I don't
15 want to commit the government. There is of course Scott
16 Romanowski, the investigator in connection with the notes.
17 And I think one of the notes we may have already put in
18 evidence. The other note of course has to deal with his
19 notes with reference a conversation with Mr. Kaiser, just
20 that excerpt. And I don't want to commit the government.
21 I think we are talking perhaps stipulating as to the
22 admission of that particular part of the notes.

23 THE COURT: You are going to reach out to
24 someone. Will you be able to confirm that?

25 MR. MISKIEWICZ: If he is going to be called, we

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1 will assist with getting him here. But we haven't had the
2 conversation about what specifically Mr. Haley wants to
3 admit. We can probably work that out.

4 MR. HALEY: What I will do, Judge, is, this
5 evening I will excerpt that aspect of those notes from
6 that are actual exhibit, itself, and then I will discuss
7 that with Mr. Miskiewicz.

8 The only other potential witness, judge, in
9 light of some testimony that was adduced today, would be
10 this Jason Wooley. But I will not delay the trial. I
11 think what we could do is I could begin my case by way of
12 Mr. Tesoriero and my client and then we could move with
13 Mr. LaRusso's case, and then Mr. Wooley maybe can get
14 stuck in at some point in time out of order. I suspect
15 the testimony would take, if we decide to bring him in,
16 all of 15 minutes, judge, candidly.

17 THE COURT: Okay.

18 MR. LaRUSSO: Judge, so I wold let the court
19 know. We are hoping to start our case, it looks like,
20 Wednesday. That might be a little bit I don't know,
21 maybe --

22 THE COURT: -- ambitious.

23 MR. LaRUSSO: Yes, judge. But I'm preparing for
24 Wednesday morning.

25 I know that we are looking at Mr. Gonchar,

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1 Mr. D'Ambrosio, and Mr. Stempler, but right now the order
2 hasn't been set.

3 Mr. Conway, who has basically been taking this
4 part of the case, has had some issues to deal with. So I
5 will be meeting with him Friday morning and I will tell
6 the government what our list of witness issues are.

7 I will try my best to give them an order of the
8 witnesses so they have a tally of who will be called when.
9 That is where I am on that, judge.

10 THE COURT: All right. Any other issues we need
11 to discuss today?

12 MR. LaRUSSO: There is one other. And it is
13 really my fault, judge.

14 I have been trying to stipulate as much as I
15 possibly can within the rules, and there have been some
16 glitches here and there.

17 We stipulated to Mr. Nussbaum. I signed the
18 stipulation and I overlooked a point that may be
19 significant. I don't know. Mr. Nussbaum was paid to put
20 money into a temporary bankruptcy, not to take it out, and
21 I signed a stip not to take it out. So I would like to
22 look at the bank records and discuss it with the
23 government. Hopefully, we can resolve that. That appears
24 to be a stip that I signed and I overlooked. It was my
25 mistake.

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1 THE COURT: Okay.

2 MR. LaRUSSO: I just want to alert the court.

3 And I apologize to the government. It may not be an
4 issue.

5 THE COURT: I'm not sure I understand. The
6 money: What is the issue?

7 MR. LaRUSSO: Put Avalon into bankruptcy.
8 Avalon. I said money. It should have been Avalon. But
9 in fact what happened, it was put into. The stip said not
10 to take out. That is the way I read it. Is that right?
11 My client is more familiar with the facts. Let me put it
12 this way. I will try to talk to the government and get it
13 resolved.

14 THE COURT: All right. Have a good night.

15 (Proceedings adjourned at 4:40 pm.)

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